CONSULTATION CONCERNING

PROPOSAL FOR AMENDMENTS

TO THE

RULES FOR THE

SUPERIOR COURT OF JUSTICE,

ONTARIO SMALL CLAIMS COURT

OCTOBER 2003

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Chart of Proposed changes enclosed as a separate document

INTRODUCTION

This Consultation Paper contains proposals to amend the Rules of the Small Claims Court of Ontario, with some commentary. The Small Claims Court Rules Sub-Committee of the Civil Rules Committee has drafted the amendments. The final draft must be reviewed and approved by legislative counsel before being submitted to the Civil Rules Committee later this Fall. They reflect our thinking and our vision: the language will likely change to conform to drafting convention.

We ask you, personally, and in consultation with others in your organization, to forward written or oral concerns and suggestions to Justice Pamela A. Thomson no later than **November 13, 2003**.

We thank you in advance for what we are sure will be thoughtful and stimulating input.

Justice Pamela A. Thomson, Chair
47 Sheppard Ave E.,
Third Floor,
Toronto M2N 1N5
pamela.thomson@jus.gov.on.ca
Fax – 416 326 3570

On behalf of

Associate Chief Justice Douglas Cunningham
Justice Donald Godfrey
Justice Marvin Zuker
Deputy Judge Harold Cohen
Deputy Judge Normand Forest
Deputy Judge Donald Kidd
James Morton, Barrister
Mr. Ian Gentle, Law Clerk
Ms. Elaine Page, Paralegal
Ms. Bonnie Gryce, Ms. Lois Lowenberger and Mr. John Twohig,
Ministry of the Attorney General

BACKGROUND

At the outset, the Small Claims Court Rules Sub-Committee of the Civil Rules Committee wants to thank Chief Justice Heather Forster-Smith. Without Chief Justice Smith's personal involvement and commitment, this project would still be languishing.

The first revision of these rules was proclaimed September 1, 1998. That previous sub-committee was chaired by Justice Peter Jarvis (see Appendix IV). The jurisdiction at the time was $6,000.00.

A smaller version of this sub-committee started work in February 2001 under the leadership of the late Justice Moira L. Caswell. Chief Justice McMurtry appointed Justice Pamela Thomson Chair in January 2002 upon Justice Caswell's resignation. The sub-committee was then expanded to add a prominent member of the Bar, a member of the Law Clerks Institute and an experienced paralegal.

We have met continually since March 2002, and will reconvene to study and assess all the suggestions and concerns arising from this consultation. The final version, as drafted by Legislative Counsel and the Civil Rules Committee Secretariat, will hopefully be considered and passed at a 2003 meeting of the Civil Rules Committee so the approval process can begin before the end of this year. Our hope is to implement the new rules, forms, instruction sheets, manuals, and brochures on July 1, 2004.

The Civil Rules Committee passed the following Resolution on April 4, 2002:

> WHEREAS the monetary jurisdiction of the Small Claims Court has increased; there is an urgent need for consistency in practice across the province, and in relationship to the Rules of Civil Procedure and to Part VII of the *Courts of Justice Act*; case management across the province is imminent; and many rules are outdated or inappropriate:

> MOVED by Debra Paulseth and seconded by Chief Justice LeSage that this Committee approve the formation of a Sub-Committee to review the Rules of the Small Claims Court, to make recommendations after appropriate consultations, and to report to this Committee.

Our debates were preceded by research of other rules in England, New Zealand, Australia, Canada, and the USA; by study of the *Courts of Justice Act* Part VII, the Rules of Civil Procedure and the Family Law Rules; and by consultation with the Bench and the Bar. We attempted to reach consensus on all issues. Other than philosophical differences as to the issue of costs and the ambit of the power to find contempt of court, and practical concerns relating to the recording of judgment debtor examinations, we were unanimous in the approach to making the process easier to understand and to administer, as well as more effective for the users of the court. We hope we have gone some way toward success.

GOALS

Our purpose is to streamline the rules and the processes they govern. We have tried to adapt or mirror the simplified procedure rules wherever appropriate. We conceive working towards consistent practices across the province, from mandatory settlement conferences, to the keeping of court records, to the content and use of forms and formal court communications with the public.

The Small Claims Court monetary jurisdiction may be increased by regulation under the *Courts of Justice Act.* In 2001, the jurisdiction was raised to $10,000.00 from $6000.00. We have considered these changes in light of the potential impact of any future changes to jurisdiction, and of desired continuity with simplified procedures in the Superior Court.

There are, of course, many matters outside the purview of these Rules which impact on the operations of the court such as education of Deputy Judges; staff training; amendments to the *Courts of Justice Act* and other statutes; implementation of computer technology and related software; governance of paralegals; and dispersal of information about the court.

Plain language is a given standard, of course, since the court is designed to be a place where litigants, who may have a wide variety of needs, can represent themselves. The rules are one step among many toward achieving true access to justice for ordinary and disadvantaged people.

OVERVIEW

These rules create a system of case management, which includes mandatory settlement conferences. As in the simplified procedure rules, there are no examinations for discovery or cross-examinations on affidavits. Assessment of damages will be by motion without notice.

Clerks of the court, now called 'registrars', would have new authority to make a variety of Orders on consent including minor procedural matters, setting aside defaults and restoring or dismissing a claim.

There would be a new rule concerning Forms, while other rules have been 'tweaked' to reflect Sections 25 and 27 of the *Courts of Justice Act*, and the experience and the analysis of committee members.

We want to preserve the use of 'Defendant's Claim' and 'Defence to Defendant's Claim' in order to keep things simple: 'cross-claim', 'counterclaim', 'third party claim' are mysterious words. In conformity with plain language, 'pretrials' will be called 'settlement conferences'.

Suggested reforms to default proceedings and to motions are aimed at speeding up any challenges and obtaining cost-effective results. Reforms to the rules concerning pleadings and their vagaries strive for quick trial and fewer adjournments. Offers to settle will need to be written for cost consequences to flow, and all negotiations would remain confidential until after judgment.

We would amend the Trial rule to recognize the need for filing reports and documents early in the process, for confirming expert witnesses' attendance at trial, and for forcing greater disclosure sooner. There would be a new rule to govern administrative dismissal for abandonment. Another innovation would allow for the vacating of satisfied judgments.

Provisions as to costs will be gathered in one single rule.

We have attempted to resolve some of the issues in garnishment and judgment debtor examinations, much of which have to do with timely communication.

The authority of Referees, Mediators and Hearing Officers appointed under rule 22 or under section 77 of the *Courts of Justice Act* would be changed and clarified. They could not hold Contempt Hearings, issue Warrants, or hear Judgment Debtor Examinations.

We want these rules and forms to stand on their own, so a self-represented litigant has a near-complete code of procedure.

SUMMARY OF MAJOR PROPOSALS

GENERAL APPLICATION

A section has been added to the definitions to clarify the difference between a 'trial' and an 'assessment hearing'. Where these rules are silent, reference would now be made to the Rules of Civil Procedure, particularly rule 76, as well as the rules themselves and to the *Courts of Justice Act*.

Just as "claim" includes defendant's claim, now "defence" includes defence to defendant's claim – although there could be a separate forms.

In order to save paper and lessen use of the full "General Heading", we suggest use of a short style similar to Form 4A in the Rules of Civil Procedure. All copies of an issued pleading would be sealed in such a way as to be felt or seen. A specific "legibility" rule has been included.

In keeping with the Rules of Civil Procedure and the reality of amalgamated administration throughout the province, references to 'clerk' have been changed to "registrar".

Rules 2 and 3 remain unchanged, as do Rules 4 and 5. We debated the wisdom of trying to adapt the Rules of Civil Procedure, and concluded the current rules were appropriate.

E-FILING

The e-filing project was extended to January 1, 2004. On October 1st, we will be recommending to the Civil Rules Committee that the project be extended two more years.

At this time we seek suggestions from you as to process and planning, focus and formatting, training and technology.

VENUE

The committee was aware of the current debate regarding proposals for amendments to the venue provisions in the Rules of Civil Procedure. Although there are advantages to adopting the Québec model of the defendant's right to be heard where she resides, our current rule of residence or where the cause of action arose is working well. The concept of "balance of convenience" is vague but broad enough to be useful in light of years of case law.

PLEADINGS

The General (long) Heading title page will ask for a lawyer's LSUC number: it is difficult to tell whether the representative is a paralegal or lawyer without this information.

We propose retaining the provisions on admission of liability in rule 9. A settlement conference could be scheduled if the proposal relates to only part of the claim.

Defendant's claims would have to be filed within 20 days of the defence, or else leave of the court would be required. This is to avoid delay later in the process.

The responsibility for serving defences remains with the registrar. Long debate as to the pros and cons of having a defendant serve the defence

resulted in concluding there would be more work, more motions and more delay in holding a settlement conference.

SERVICE

The last round of amendments consolidated service procedure in rule 8.

Service by courier is now available for most processes except subpoenas and notices of contempt hearing (always personal).

Parties must keep the court and each other advised of address changes.

DEFAULT PROCEEDINGS

Rules 11 and 17.01 deal with default. Rule 11.06 clarifies what would have to be shown at a defendant's motion to set aside a default judgment, where there is no consent. We recommend adding administrative dismissal by the registrar in keeping with new subrule 37.02(3) of the Rules of Civil Procedure.

A motion to set aside a default at trial by a plaintiff or a defendant would have to be brought within 30 days of becoming aware of the judgment unless there are special circumstances. Delay in bringing motions is currently a serious problem, resulting in too many 'old' cases being revived: the opportunity to defend and be heard is not indefinitely available. Motions would be served on all parties, even those in default.

Defendants in default have no right to notice except about default judgment, judgment at an assessment, amendments and enforcements. Subrule 11.06(1) clarifies the three conditions to be shown at a defendant's motion to set aside a noting of default, a default Judgment or a "consequence of default" prior to trial. Such consequences could include costs orders for non-attendance at mediation or a dismissal because those costs went unpaid.

A motion for a new trial is not an alternative to a default set aside. A transcript of the reasons for judgment would have to be served and filed before the motion hearing. The grounds for ordering a new trial are narrow and unchanged.

Rule 11.04 revises the procedure for obtaining a default judgment for an unliquidated amount or claim for recovery of property. An assessment would be done upon motion, unless the plaintiff (for example, in a personal injury matter) requests an assessment hearing. The reviewing judge also might request better evidence or order an assessment hearing. In any case, the registrar would serve the judgment on all parties. Hopefully this will eliminate assessment hearings, for the most part. The judgment on default will have been brought to the defendant's attention, so any motion to set aside may be filed before too much has been expended on collection.

The rule clarifies that default judgment may be signed for all or part of a claim.

On consent, the registrar would be able to do a variety of actions in the new 11.06(2), including a dismissal on consent.

A motion under subrule 18.01(2) to set aside a default at trial by a plaintiff or a defendant must be brought within 30 days of becoming aware of the judgment, unless there are special circumstances.

The policy of the rules is that motions to reopen, reverse, correct or clarify an order made in the absence of a party are not appeals. Default orders made before trial are generally considered 'interlocutory', and need not be appealed to the Divisional Court, but may, rather, be dealt with by motion.

ORDERS AS TO PLEADINGS

Amendments would be made no later than the 30th day before the original trial date, to avoid surprise and adjournments. Thereafter, leave would have to be obtained. There could be forms for amended pleadings.

The grounds for striking or amending a pleading, dismissing or staying an action, or giving summary judgment are the same, except that the old saw about "scandalous, frivolous or vexatious" is gone: the word "irrelevant" is proposed. We have tried to strengthen the requirement that all documents be filed with a pleading: should documents not be filed with the pleading, consequences could flow.

SETTLEMENT CONFERENCES AND CASE MANAGEMENT

The committee feels that the word "pretrial" was not sufficiently reflective of this pre-trial process. British Columbia's term of "settlement conference" seems more appropriate and descriptive of the primary purpose of this portion of the proceedings.

The most important rule amendment, in so far as policy is concerned, is the MANDATORY settlement conference to be held within 90 days of the first defence being filed. This was recommended by Justice Zuber in his 1987 *Report of the Ontario Courts Inquiry*, by the *Report of the Joint Committee on Court Reform*, 1992, and by the *Civil Justice Review*, 1996.

A new rule on time-limit-driven case management similar to rule 76.06 and subrule 48.14(3) is proposed. Matters would be dismissed as abandoned after generous time periods, including a 45-day notice.

Disclosure, required early by the rules governing pleadings, must be as thorough as it can be prior to the settlement conference. A *Summary of Facts and Issues* form would be filed prior to the settlement conference. In the absence of the Summary form, documents and a *Witness List* would have to be served and filed in advance. Expanded cost consequences for poor preparation are suggested.

A party would have to attend, with or without representation. The powers of a judge would be expanded. A judge would have to sign recommendations of mediators, referees and hearings officers appointed pursuant to rule 22 and section 77 of the *Courts of Justice Act* before they become orders of the court. The order would then be sent to the parties.

Any orders made in writing or orally at the settlement conference would have to be confirmed in writing on the court record or on the *Settlement Conference Memorandum*. New forms, including guidelines for the opening of the conference, will also be an important feature of these amendments.

Parties would not be allowed to consent to the pretrial judge hearing the trial under any circumstance.

OFFERS TO SETTLE

The rule on offers to settle makes it clear that offers, acceptances and withdrawals must be in writing and served on all parties at least seven days before the trial starts. There will be forms available. A time-limited offer would be deemed to expire the day after the deadline. We have chosen not to replicate rule 49 in its entirety, as being too technical, confusing and inapplicable.

The prohibition on communication to the trial judge would be expanded to include negotiations. Trial judges assume there have been negotiations and offers: parties must resist the temptation to pat their own back or to 'get at' the opposition. The cost consequences flowing from the rule are now in rule 20.

MOTIONS

In conformity with the rest of the Superior Court, motion materials would have to be filed no later than three days before the hearing. It is unfair to parties, others in the court and the judge to bring motions at the last minute. They will not be accepted even if a spot has been reserved. Local practices of accepting late filings for a reserved spot would be abandoned. Responding material would need to be filed two days before the hearing.

Again, to avoid reviving ancient cases, orders made without notice, together with the motion materials, should be served on the persons affected within five days. There is then a thirty-day window to move to set aside that *ex parte* order.

Some courts find motions are often filed which repeat requests already refused. A motion to prohibit can stop this pattern.

Motions could not be adjourned in advance without written consent. Many motions after judgment would be served on all parties, even those in default.

TRIALS AND EVIDENCE

A third request for adjournment could not be done administratively. A motion will have to be brought.

The *Summary of Facts and Issues* form would either be filed or updated thirty days before trial. This needs to be a 'court of no surprises'.

Although rarely used, the right to take a view is preserved.

The qualifications of an expert giving a written report would have to be served with the report. If a witness were summonsed, all parties would be sent a copy of the summons. This will avoid duplication, and allows proper preparation. Even if lists of witnesses have been exchanged at or after settlement conference, or are contained in the Summary of Facts and Issues, wisdom suggests updating of witness lists before trial.

The party must inquire as to a subpoenaed witness's need for an interpreter, and to arrange for an interpreter (other than French) to attend trial. The court would have to be advised to retain a French interpreter for witnesses. These measures are to avoid unnecessary adjournments because of surprise.

Documents, statements and reports not previously produced should be served and filed thirty days before trial. The sooner full disclosure is made, the more likely the matter will settle or proceed more smoothly. Although there is broad discretion to admit undisclosed evidence, the policy of these rules is for full disclosure well in advance.

COSTS

This committee is aware of a variety of views with respect to cost awards and the interpretation of various costs provisions in the current rules. These amendments hope to encourage consistency.

This issue of cost awards was one of the most difficult challenges for us. We attempted to strike a balance between the principles of access to justice (no costs other than tariff disbursements), the concepts of partially reimbursing a 'winner' or admonishing a 'loser', and the idea of rewarding someone who has assisted the court in reaching a speedy, well-informed judgment. The prime policy we have arrived at is that representation fees in

this court are neither to punish nor to indemnify. We believe this to be reflective of section 29 of the *Courts of Justice Act*, which we propose to reproduce in the rule itself primarily for the assistance of self-represented parties. A representation fee is recognition of the value of assistance rendered to the court, to the parties and to the administration of justice generally.

Particularly given the increasing length and complexity of trials, broader flexibility is required for representation fees. Recognizing the role played by paralegals in this court, provisions have been added which would address costs relating to representation by agents. The award of a representation fee to an agent would be to the same level as that of a student-at-law.

There are several types of costs: reasonable **disbursements**, which are expanded to include receipted travel, photocopying, reports etc.; a **preparation fee**; a **representation fee**; **compensation** for inconvenience and expense on an adjournment, or to a self-represented party at trial.

In addition, a **penalty** can be levied in limited circumstances, as contemplated by section 29: rule 20.06 is a conscious departure from our policy, and is intended to reflect the very limited circumstances where an award of costs might exceed 15% of the amount claimed.

Costs are limited on motions and settlement conferences, exclusive of disbursements, except in exceptional (and rare) circumstances.

THE COLLECTION PROCESS

The enforcement of judgments and orders has always been a troublesome issue. Writs of execution must be executed through the sheriff's office. Sale of personal property cannot take place until thirty days after written notice has been sent and the sale is advertised.

Garnishment is the most effective and least costly collection mechanism. It would last for six years. The garnishee would now get a blank garnishee statement served with the notice of garnishment. The debtor must be served within five days of service on the garnishee. The creditor would be informed by the clerk that money is received. The money would be paid out thirty days after the first return, and thereafter immediately for all further

payments, unless a motion is filed. In keeping with the Rules of Civil Procedure, a garnishment will survive for six years.

The heading of 21.08(2) has been changed: there is no such word as "garnishable".

The committee heard a number of concerns about these procedures, and our proposals are designed to improve enforcement processes. There continues to be no alternative method of service available for a Notice of Contempt Hearing: it must be served personally.

We recommend examinations of judgment debtors and contempt hearings be under oath in addition to being held in private. The committee recommends that judgment debtor examinations be recorded as a way of encouraging communication: however this proposal is still being studied with a view to its practicality and potential cost implications.

A person called to a judgment debtor examination would have a duty to inform herself, and to complete a *Financial Disclosure Statement.* The contempt of court process is presented as a separate subrule.

We have attempted to make it clear that a warrant is issued for willfully disregarding the court by not appearing, by refusing to answer questions or to produce documents or, we propose, by ignoring an court order to pay instalments more than once without justification.

Writs of seizure and sale of personal property should be in force for six years, rather than six months and may be renewed before expiry. No writ could be issued later than six years after judgment without permission

REFEREES, MEDIATORS AND HEARINGS OFFICERS

There are no permanent referees and only one mediator in the province. All others are either deputy judges or "designated persons" – generally hearings officers – appointed under section 77 *Courts of Justice Act.*

Consequently the last rule needed re-assessment. Given that a finding of contempt of court and an order for a contempt hearing may be made at judgment debtor examinations, we felt strongly that only judges and deputy judges should preside, particularly if an oath will be administered.

Non-judges make recommendations only (other than in rule 9.03 terms hearings). These become orders only when signed by a judge.

FORMS

There will be more forms in order to assist both litigants and staff. Forms would have much more information on "how to" and "what if" and as to consequences. We had wanted coloured paper or printing, but that is impractical and uneconomical. The use of fonts, bolding, italics, tick boxes and shading will make the forms as understandable as possible.

We plan to have the forms easily transferable to future e-file and case management technology.

Although the French language forms are regulated separately from the English, the sub-committee would like to propose that, other than the title page, the French follow on a separate page. We have surveyed the Ontario forms under the *Courts of Justice Act* at http://www.attorneygeneral.jus.gov.on.ca/english/courts/scc/sccforms/asp, and those of the various provinces at www.canlaw.com/scc/smallclaims.htm.

The absence of a visible or tactile seal can encourage abuses, and fill up motions lists with requests to set aside by a party who took the document as unofficial. Electronic documents have an identifier, yet the vast majority of documents received by the public do not. We suggest a seal be put on the original and on all copies to be served.

CHART OF PROPOSED CHANGES

What follows, as a separate document is a chart with the proposed new rules to the right of the current ones. We hope this will be helpful to you in evaluating our suggestions.

We look forward to your comments and criticisms by the 13th of November.

APPENDIX I

Former Chief Justice LeSage requested Former Associate Chief Justice Heather Smith to confer with the late Justice Caswell and Justice Thomson about improvements to the process, particularly pre- trial conferences. The Associate Chief Justice's enthusiasm and energy just kept rolling us along. We are grateful for Chief Justice Smith's encouragement and support.

We also want to acknowledge the assistance of Ms. Diane Lawrence at Osgoode Hall for setting up space and ensuring we were comfortable. Daniella Meffe was our "general factotum" before being promoted downtown. We thank her for getting us up and running.

We have been so lucky to have had Mallory Williams assisting the Chair and the members with wonderful minutes, insights, organization of meetings and teleconferences, and acting as our 'corporate memory" and computer wiz.

The work and dedication of the late Justice Moira Caswell was without parallel. The Chair, particularly, would not be who she is without her dear sister & colleague. It was a privilege to know her & work with her enthusiastic interest in this Court.

The Chair would like to personally salute & thank each member of this committee for her or his unfailing dedication to this project. Each brought a special perspective, humour, patience & individual talents. I am so grateful to them all.

APPENDIX II

Associate Chief Justice Douglas Cunningham has been a member of the SCCRS since 2002. He is the Chair of the Ontario Deputy Judges Council, which has been responsible for excellent education courses over the past two years.

Justice Pamela Thomson has been a member of the Small Claims Court in its variety of nomenclatures since 1981. She is the architect and overseer of the case management system used in Toronto since 1990.

Justice Donald Godfrey was appointed to the Small Claims Court in 1987. He is the administrative judge for Toronto.

Justice Marvin Zuker sat in the Small Claims Court between 1979 & 1990, when he transferred to the Family Court. He is the author of *Small Claims Court Practice* and editor of the *Consolidated Ontario Small Claims Court Statutes, Regulations and Rules,* published annually by Carswell.

Ms. Bonnie Gryce is the Manager of Court Operations for Hastings and Prince Edward Counties. She has been with the Ontario Government for over 31 years, 27 of which have been with the Ministry of the Attorney General, Court Services Division.

Ms. Lois Lowenberger is Lead Counsel, Civil/Family Policy and Programmes Branch, Court Services Division, Ministry of the Attorney General.

Mr. John Twohig is Senior Counsel in the Policy Branch of the Ministry of the Attorney General. He is also a deputy judge in Toronto and a member of the Civil Rules Committee Secretariat.

Mr. Harold B. Cohen, Q.C. was called to the bar in 1960. He is a member of the firm of Mcphail Buie and Cohen and has served as a deputy judge in Toronto since 1993.

Mr. Normand Forest was called to the Bar in 1964 and has sat as a deputy judge in Sudbury and region since 1985. He is a member of the firm of Lacroix Forest LLP.

Mr. Donald Kidd is a civil litigator with the firm of Smith Valeriote in Guelph. He was called to the Bar in Ontario in 1976 and to the Yukon Bar in 1977, where he practiced until 1985. He has been a deputy judge in the Central West Region since 1992. Mr. Kidd is a member of the Central West Bench and Bar Committee, has been active in the Wellington Law Association and the OBA, and recently chaired the Attorney General's Advisory Committee on Contingency Fee implementation.

Mr. James C. Morton is a certified specialist in civil litigation with the firm of Steinberg Morton Frymer in Toronto. He is the author of numerous legal textbooks, including, most recently, *Ontario Superior Court Practice, 2003/04.* Mr. Morton lectures at Osgoode Hall Law School and Thomas M. Cooley Law School in Lansing, Michigan. He is the Past Chair of the OBA Civil Litigation Executive.

Mr. Ian Gentle is a fellow member of the Law Clerks Institute. He has been a practicing law clerk at Miller, Thomson LLP since 1973.

Ms. Elaine Page is a partner in the paralegal firm of Landmark Legal Services Ltd. In 1993 she branched out on her own after having spent several years working in the law firm environment.

APPENDIX III

Dates of meetings 2001-2003

The full committee met in person on

Tuesday, February 27, 2001
Monday, March 26, 2001
Monday, April 23, 2001
Friday, March 20, 2002
Wednesday, May 22, 2002
Thursday, September 19, 2002
Tuesday, October 22, 2002
Tuesday, December 10, 2002
Monday, February 17, 2003
Monday, March 10, 2003
Monday, March 31, 2003
Tuesday, April 22, 2003
Thursday, May 27, 2003
Tuesday, June 24, 2003

The full committee met by teleconference on

Friday, July 5, 2002
Friday, August 16, 2002
Thursday, January 9, 2003
Thursday, May 1, 2003
Thursday, May 8, 2003
Thursday, May 15, 2003
Thursday, June 5, 2003
Wednesday, June 11, 2003
Tuesday, June 17, 2003
Thursday, July 10, 2003
Tuesday, July 15, 2003
Tuesday, July 29, 2003
Wednesday, August 27, 2003
Thursday, September 4, 2003
Thursday, September 11, 2003
Friday, September 12, 2003
Thursday, September 18, 2003
Tuesday, September 23, 2003

APPENDIX IV

1995 to 1998 Small Claims Court Rules Sub-Committee

JUSTICE PETER JARVIS (CHAIR)
JUSTICE REUBEN BROMSTEIN
JUSTICE DONALD GODFREY
JUSTICE MARVIN ZUKER
DEPUTY JUDGE THOMAS CLEMENHAGEN
DEPUTY JUDGE JOHN LOFASO
DEPUTY JUDGE GREGORY MULLIGAN
DEPUTY JUDGE WILLA VORONEY
MR. PAUL DUSOME, BARRISTER
MR. GUY ATTISANO, MINISTRY OF THE ATTORNEY GENERAL
MR. JOHN TWOHIG , MINISTRY OF THE ATTORNEY GENERAL

COMPARISION CHART

Proposed Amendments

To the

Rules Of The

Superior Court of Justice,

Ontario Small Claims Court

OCTOBER 2003

EXISTING RULES	PROPOSED RULES
RULE 1 INTERPRETATION *Citation* 1.01 These rules may be cited as the Small Claims Court Rules. *Definitions* 1.02 In these rules, "court" means the Small Claims Court; ("tribunal") "disability", where used in respect of a person or party, means that the person or party (a) a minor, (b) mentally incapable within the meaning of section 6 or 45 of the Substitute Decisions Act, 1992 in respect of an issue in the proceeding, whether the person or party has a guardian or not, or (c) an absentee within the meaning of the Absentees Act; ("incapable") "document" includes data and information in electronic form; ("document") "electronic" includes created, recorded, transmitted or stored in digital form or in other intangible form by electronic, magnetic or optical means or by any other means that has capabilities for creation, recording, transmission or storage similar to those means, and "electronically" has a corresponding meaning; ("électronique", "par voie électronique") "holiday" means any Saturday or Sunday, New Year's Day, Good Friday, Easter Monday, Victoria Day, Canada Day, Civic Holiday, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day, Boxing Day, and any special holiday proclaimed by the Governor General or the Lieutenant Governor, and if New Year's Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is a holiday, and if Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are holidays, and if Christmas Day falls on a Friday, the following Monday is a holiday; ("jour férié") "information technology" means the information technology capable of being accessed on December 10, 2001 through www.justiceontario.net, the electronic filing web site of the Ministry of the Attorney General; ("technologies de l'information") "order" includes a judgment. ("ordonnance") *Non-Application* (2) The definition of "information technology" in subrule (1) does not apply on and after January 1, 2004.	RULE 1 INTERPRETATION, **FORMS AND E-FILE** *Citation* 1.01 These rules may be cited as the Small Claims Court Rules. *Definitions* 1.02 (1) In these rules, **"assessment hearing" is a hearing before a judge to determine, on evidence presented, the amount, if any, due by a party in default** "claim" includes a Defendant's Claim "court" means the Small Claims Court; ("tribunal") **"defence" includes Defence to Defendant's Claim** "disability", where used in respect of a person or party, means that the person or party is, (a) a minor, (b) mentally incapable within the meaning of section 6 or 45 of the Substitute Decisions Act, 1992 in respect of an issue in the proceeding, whether the person or party has a guardian or not, or (c) an absentee within the meaning of the Absentees Act; ("incapable") "document" includes data and information in electronic form; ("document") "electronic" includes created, recorded, transmitted or stored in digital form or in other intangible form by electronic, magnetic or optical means or by any other means that has capabilities for creation, recording, transmission or storage similar to those means, and "electronically" has a corresponding meaning; ("électronique", "par voie électronique") "holiday" means, (a) any Saturday or Sunday, (b) New Year's Day, (c) Good Friday, (d) Easter Monday, (e) Victoria Day, (f) Canada Day, (g) Civic Holiday, (h) Labour Day, (i) Thanksgiving Day, (j) Remembrance Day, (k) Christmas Day, (l) Boxing Day, and (m) any special holiday proclaimed by the Governor General or the Lieutenant Governor, and if New Year's Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is a holiday, and if Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are holidays, and if Christmas Day falls on a Friday, the following Monday is a holiday; ("jour férié") "information technology" means the information technology capable of being accessed on December 10, 2001 through www.justiceontario.net, the electronic filing web site of the Ministry of the Attorney General; ("technologies de l'information") "order" includes a judgment. ("ordonnance") **"settlement conference" means a conference convened pursuant to r. 14** **"trial" is a hearing before a judge where the issues of liability and relief are contested and a judgment is given after a hearing deciding those issues** *Non-Application* (2) The definition of "information technology" in subrule (1) does not apply on and after January 1, **2006**.

EXISTING RULES	PROPOSED RULES
General Principle 1.03 (1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every proceeding on its merits in accordance with section 25 of the Courts of Justice Act. *Matters Not Provided For* (2) If matters are not provided for in these rules, the practice shall be determined by analogy to them and the court may, at any stage in a proceeding, make any order that is just. *Orders on Terms* 1.04 When making an order under these rules, the court may impose such terms and give such directions as are just. *Forms* 1.05 (1) The forms prescribed by these rules shall be used where applicable and with such variations as the circumstances require General Heading (2) Every document in a proceeding, except a notice of garnishment and certificate of service, shall have a general heading in accordance with Form 1A. *Pilot Project - Use of Electronic Documents* 1.06 (1) Where an action has been commenced in a court office named in the Schedule to this subrule, on or after the date shown in the Schedule opposite the name of the court office, a lawyer or another person who has filed a requisition (Form 1B) with the clerk may, subject to subrule (5), use electronic documents for issuing, serving and filing in that action during the pilot project period. *Schedule* Toronto Small Claims Court December 10, 2001 47 Sheppard Avenue East Willowdale, ON M2N 5N1 (2) The pilot project period begins on December 10, 2001 and ends on December 10, 2003. *Test Period* (3) The test period at a court office, for the purposes of subrules (4) and (5), is the period that begins on the date shown opposite the name of the court office in the Schedule to subrule (1) and ends three months later. (4) The Attorney General shall establish a list of lawyers and other persons for the test period at a court office named in the Schedule to subrule (1), in accordance with the following rules: 1. Only a person who has demonstrated capacity and willingness to use information technology as defined in rule 1.02 may be named on the list. 2. The Attorney General may add persons to the list and remove persons from the list during the test period. 3. The Attorney General shall keep the list current and shall make copies available at the court office. (5) During the test period, only a person who is named on the list may use electronic documents as provided in subrule (1).	*General Principle* 1.03 (1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every proceeding on its merits in accordance with section 25 **and Part VII** of the Courts of Justice Act. *Matters Not Provided For* (2) If matters are not provided for in these rules, the practice shall be determined by analogy to them **and, if necessary, by analogy to the Rules of Civil Procedure, particularly rule 76**, and the court may, at any stage in a proceeding, make any order that is just. *Orders on Terms* 1.04 When making an order under these rules, the court may impose such terms and give such directions as are just. *Forms* 1.05 (1) The forms prescribed by these rules shall be used where applicable and with such variations as the circumstances require. **General Heading** (2) Every document in a proceeding, except a notice of garnishment and certificate of service, shall have a general heading in accordance with Form 1A **(3) In a document other than a claim, defence, notice of motion or document under Rule 21, a short title of proceedings setting out the name of the court, file number and name of the parties may be used.** **Documents** **(4) All documents shall be printed, typewritten, handwritten or otherwise reproduced legibly.** *Pilot Project - Use of Electronic Documents* **–Toronto Small Claims Court** 1.06 (1) Where an action has been commenced in the **Toronto Small Claims Court on or after December 10,2001**, a lawyer or another person **may use** electronic documents for issuing and filing in that action during the **period that ends on January 1, 2006, if the lawyer or other person,** **(a) is named on the list under subrule (2); and** **(b) has filed a requisition (Form1B) with the registrar.** **List** **(2)** The Attorney General shall establish a list of lawyers and other **persons for the Toronto Small Claims Court**, in accordance with the following rules: 1. Only a person who has demonstrated capacity and willingness to use information technology as defined in rule 1.02 may be named on the list. 2. **The Attorney General may add persons to the list and remove persons from the list.** 3. The Attorney General shall keep the list current and shall make copies available at the court office.

EXISTING RULES	PROPOSED RULES
Electronic Documents - Standards (6) An electronic document in a proceeding shall meet the following standards: 1. The document shall contain the information and data prescribed in these rules, in a format substantially the same as prescribed in these rules. 2. The information and data contained in the document shall be accessible and usable for subsequent reference. 3. The document shall be capable of being printed as an accurate rendering or reproduction of the document produced or transmitted. 4. The document shall use information technology as defined in rule 1.02. *Electronic Forms Requiring Signature* (7) If a form that requires a signature is issued or produced by the court as an electronic document, the use of a unique identifier satisfies the signature requirement. *Electronic Documents - Original Written Versions* (8) An affidavit or a signed or certified document that is filed as an electronic document shall, (a) clearly identify the signatory; and (b) be accompanied by a statement of the person filing the electronic document, indicating that, (i) the original written version of the document is signed by the person identified as signatory in the electronic document, and by a person authorized to administer oaths or affirmations, if applicable, and (ii) any interlineations, erasures or other alterations in the original written version are initialled by the person or persons mentioned in subclause (i). (9) A person who makes a statement under clause (8) (b), (a) shall keep the original written version of the document until the proceeding, including any appeals, is finally disposed of, or until the clerk requests that it be filed, whichever is earlier; and (b) shall file the original written version forthwith on the clerk's request. (10) When any person files a requisition (Form 1C) to inspect the original written version of the document, the clerk shall make a request under clause (9) (b). (11) If a person makes a false statement under clause (8) (b) or fails to comply with subrule (9) the court may, (a) in the case of a statement made by or on behalf of a plaintiff, dismiss the action; (b) in the case of a statement made by or on behalf of a defendant, strike out the defence or the defendant's claim; or (c) make such other order as is just. *Notice* (12) In a proceeding to which this rule applies, any notice required to be given shall be given in writing or electronically. *Copies* (13) In a proceeding to which this rule applies, any requirement that more than one copy be filed is satisfied if, (a) the document has already been filed electronically; or (b) a single version of the document is filed electronically. *Electronic Issuing* (14) In a proceeding to which this rule applies, a document may be issued electronically by using information technology as defined in rule 1.02.	*Electronic Documents - Standards* **(4)** An electronic document in a proceeding shall meet the following standards: 1. The document shall contain the information and data prescribed in these rules, in a format substantially the same as prescribed in these rules. 2. The information and data contained in the document shall be accessible and usable for subsequent reference. 3. The document shall be capable of being printed as an accurate rendering or reproduction of the document produced or transmitted. 4. The document shall use information technology as defined in rule 1.02. *Electronic Forms Requiring Signature* **(5)** If a form that requires a signature is issued or produced by the court as an electronic document, the use of a unique identifier satisfies the signature requirement. *Electronic Documents - Original Written Versions* **(6)** An affidavit or a signed or certified document that is filed as an electronic document shall, (a) clearly identify the signatory; and (b) be accompanied by a statement of the person filing the electronic document, indicating that, (i) the original written version of the document is signed by the person identified as signatory in the electronic document, and by a person authorized to administer oaths or affirmations, if applicable, and (ii) any interlineations, erasures or other alterations in the original written version are initialled by the person or persons mentioned in subclause (i). **(7)** A person who makes a statement under clause **(6)**(b), (a) shall keep the original written version of the document until the proceeding, including any appeals, is finally disposed of, or until the **registrar** requests that it be filed, whichever is earlier; and (b) shall file the original written version forthwith on the **registrar**'s request. **(8)** When any person files a requisition (Form 1C) to inspect the original written version of the document, the **registrar** shall make a request under clause **(7)** (b). **(9)** If a person makes a false statement under clause **(6)** (b) or fails to comply with subrule **(7)** the court may, (a) in the case of a statement made by or on behalf of a plaintiff, dismiss the action; (b) in the case of a statement made by or on behalf of a defendant, strike out the defence or the defendant's claim; or (c) make such other order as is just. *Notice* **(10)** In a proceeding to which this rule applies, any notice required to be given shall be given in writing or electronically. *Copies* **(11)** In a proceeding to which this rule applies, any requirement that more than one copy be filed is satisfied if, (a) the document has already been filed electronically; or (b) a single version of the document is filed electronically. *Electronic Issuing* **(12)** In a proceeding to which this rule applies, a document may be issued electronically by using information technology as defined in rule 1.02.

EXISTING RULES	PROPOSED RULES
Deemed Issuing (15) A document issued under subrule (14) shall be deemed to have been issued by the Small Claims Court. *Notice - Document Issued* (16) After a document is issued electronically, notice that it was issued shall be sent to the party that had it issued. *Electronic Filing* (17) In a proceeding to which this rule applies, a document may be filed electronically by using information technology as defined in rule 1.02. *Notice - Document Filed* (18) After a document is filed electronically, notice that it was filed shall be sent to the party that filed it. *Revocation* (19) This rule is revoked on December 10, 2003.	*Deemed Issuing* **(13)** A document issued under subrule (I4) shall be deemed to have been issued by the Small Claims Court. *Notice - Document Issued* **(14)** After a document is issued electronically, notice that it was issued shall be sent to the party that had it issued. **(15)** In a proceeding to which this rule applies, a document may be filed electronically by using information technology as defined in rule 1.02. *Notice - Document Filed* **(16)** After a document is filed electronically, notice that it was filed shall be sent to the party that filed it. *Revocation* **(17)** This rule is revoked on **January 1, 2006**.
RULE 2 NON-COMPLIANCE WITH THE RULES *Effect of Non-Compliance* 2.01 A failure to comply with these rules is an irregularity and does not render a proceeding or a step, document or order in a proceeding a nullity, and the court may grant all necessary amendments or other relief, on such terms as are just, to secure the just determination of the real matters in dispute. *Court May Dispense With Compliance* 2.02 If necessary in the interest of justice, the court may dispense with compliance with any rule at any time.	RULE 2 NON-COMPLIANCE WITH THE RULES *Effect of Non-Compliance* 2.01 A failure to comply with these rules is an irregularity and does not render a proceeding or a step, document or order in a proceeding a nullity, and the court may grant all necessary amendments or other relief, on such terms as are just, to secure the just determination of the real matters in dispute. *Court May Dispense With Compliance* 2.02 If necessary in the interest of justice, the court may dispense with compliance with any rule at any time.
RULE 3 TIME *Computation* 3.01 If these rules or an order of the court prescribe a period of time for the taking of a step in a proceeding, the time shall be counted by excluding the first day and including the last day of the period; if the last day of the period of time falls on a holiday, the period ends on the next day that is not a holiday. *Powers of Court* 3.02 (I) The court may lengthen or shorten any time prescribed by these rules or an order, on such terms as are just. *Consent* (2) A time prescribed by these rules for serving or filing a document may be lengthened or shortened by filing the consent of the parties.	RULE 3 TIME *Computation* 3.01 If these rules or an order of the court prescribe a period of time for the taking of a step in a proceeding, the time shall be counted by excluding the first day and including the last day of the period; if the last day of the period of time falls on a holiday, the period ends on the next day that is not a holiday (I) *Powers of Court* 3.02 (1) The court may lengthen or shorten any time prescribed by these rules or an crder, on such terms as are just. *Consent* (2) A time prescribed by these rules for serving or filing a document may be lengthened or shortened by filing the consent of the parties

RULE 4 PARTIES UNDER DISABILITY

Plaintiff's Litigation Guardian

4.01 (1) An action by a person under disability shall be commenced or continued by a litigation guardian, subject to subrule (2).

Exception

(2) A minor may sue for any sum not exceeding $500 as if he or she were of full age.

Consent

(3) A plaintiff's litigation guardian shall, at the time of filing a claim or as soon as possible afterwards, file with the clerk a consent (Form 4A) in which the litigation guardian,

(a) states the nature of the disability;

(b) in the case of a minor, states the minor's birth date;

(c) sets out his or her relationship, if any, to the person under disability;

(d) states that he or she has no interest in the proceeding contrary to that of the person under disability;

(e) acknowledges that he or she is aware of his or her liability to pay personally any costs awarded against him or her or against the person under disability; and

(f) states whether he or she is represented by a lawyer or agent and, if so, gives that person's name and confirms that the person has written authority to act in the proceeding.

Defendant's Litigation Guardian

4.02 (1) An action against a person under disability shall be defended by a litigation guardian.

(2) A defendant's litigation guardian shall file with the defence a consent (Form 4B) in which the litigation guardian,

(a) states the nature of the disability;

(b) in the case of a minor, states the minor's birth date;

(c) sets out his or her relationship, if any, to the person under disability;

(d) states that he or she has no interest in the proceeding contrary to that of the person under disability; and

(e) states whether a lawyer or agent represents him or her and, if so, gives that person's name and confirms that the person has written authority to act in the proceeding.

(3) If it appears to the court that a defendant is a person under disability and the defendant does not have a litigation guardian the court may, after notice to the proposed litigation guardian, appoint as litigation guardian for the defendant any person who has no interest in the action contrary to that of the defendant.

Who May Be Litigation Guardian

4.03 (1) Any person who is not under disability may be a plaintiff's or defendant's litigation guardian, subject to subrule (2).

(2) If the plaintiff or defendant,

(a) is a minor, in a proceeding to which subrule 4.01 (2) does not apply,

(i) the parent or person with lawful custody or another suitable person shall be the litigation guardian, or

(ii) if no such person is available and able to act, the Children's Lawyer shall be the litigation guardian;

(b) is mentally incapable and has a guardian with authority to act as litigation guardian in the proceeding, the guardian shall be the litigation guardian;

(c) is mentally incapable and does not have a guardian with authority to act as litigation guardian in the proceeding, but has an attorney under a power of attorney with that authority, the attorney shall be the litigation guardian;

(d) is mentally incapable and has neither a guardian with authority to act as litigation guardian in the proceeding nor an attorney under a power of attorney with that power,

(i) a suitable person who has no interest contrary to that of the incapable person may be the litigation guardian, or

RULE 4 PARTIES UNDER DISABILITY

Plaintiff's Litigation Guardian

4.01 (1) An action by a person under disability shall be commenced or continued by a litigation guardian, subject to subrule (2).

Exception

(2) A minor may sue for any sum not exceeding $500 as if he or she were of full age.

Consent

(3) A plaintiff's litigation guardian shall, at the time of filing a claim or as soon as possible afterwards, file with the **registrar** a consent (Form 4A) in which the litigation guardian **states**

(a) the nature of the disability;

(b) **the minor's birth date, in the case of a minor;**

(c) his or her relationship, if any, to the person under disability;

(d) that he or she has no interest in the proceeding contrary to that of the person under disability;

(e) that he or she is aware of his or her liability to pay personally any costs awarded against him or her or against the person under disability; and

(f) whether he or she is represented by a lawyer or agent and, if so, gives that person's name and confirms that the person has written authority to act in the proceeding.

Defendant's Litigation Guardian

4.02 (1) An action against a person under disability shall be defended by a litigation guardian.

(2) A defendant's litigation guardian shall file with the defence a consent (Form 4B) in which the litigation guardian **states**,

(a) the nature of the disability;

(b) **the minor's birth date, in the case of a minor**;

(c) his or her relationship, if any, to the person under disability;

(d) that he or she has no interest in the proceeding contrary to that of the person under disability; and

(e) whether he or she is represented by a lawyer or agent and, if so, gives that person's name and confirms that the person has written authority to act in the proceeding

(3) If it appears to the court that a defendant is a person under disability and the defendant does not have a litigation guardian the court may, after notice to the proposed litigation guardian, appoint as litigation guardian for the defendant any person who has no interest in the action contrary to that of the defendant.

Who May Be Litigation Guardian

4.03 (1) Any person who is not under disability may be **a litigation guardian**, subject to subrule (2).

(2) If the plaintiff or defendant,

(a) is a minor, in a proceeding to which subrule 4.01 (2) does not apply,

(i) the parent or person with lawful custody or another suitable person shall be the litigation guardian, or

(ii) if no such person is available and able to act, the Children's Lawyer shall be the litigation guardian;

(b) is mentally incapable and has a guardian with authority to act as litigation guardian in the proceeding, the guardian shall be the litigation guardian;

(c) is mentally incapable and does not have a guardian with authority to act as litigation guardian in the proceeding, but has an attorney under a power of attorney with that authority, the attorney shall be the litigation guardian;

(d) is mentally incapable and has neither a guardian with authority to act as litigation guardian in the proceeding nor an attorney under a power of attorney with that power,

(i) a suitable person who has no interest contrary to that of the incapable person may be the litigation guardian, or

EXISTING RULES	PROPOSED RULES
(ii) if no such person is available and able to act, the Public Guardian and Trustee shall be the litigation guardian; (e) is an absentee, (i) the committee of his or her estate appointed under the Absentees Act shall be the litigation guardian, (ii) if there is no such committee, a suitable person who has no interest contrary to that of the absentee may be the litigation guardian, or (iii) if no such person is available and able to act, the Public Guardian and Trustee shall be the litigation guardian; (f) is a person in respect of whom an order was made under subsection 72 (1) or (2) of the Mental Health Act as it read before April 3, 1995, the Public Guardian and Trustee shall be the litigation guardian. *Duties of Litigation Guardian* 4.04 (1) A litigation guardian shall diligently attend to the interests of the person under disability and take all steps reasonably necessary for the protection of those interests, including the commencement and conduct of a defendant's claim. *Public Guardian and Trustee, Children's Lawyer* (2) The Public Guardian and Trustee or the Children's Lawyer may act as litigation guardian without filing the consent required by subrule 4.01 (3) or 4.02 (2). r. 4.04 (2). *Power of Court* 4.05 The court may remove or replace a litigation guardian at any time. *Setting Aside Judgment, etc.* 4.06 If an action has been brought against a person under disability and the action has not been defended by a litigation guardian, the court may set aside the noting of default or any judgment against the person under disability on such terms as are just, and may set aside any step that has been taken to enforce the judgment. *Settlement Requires Court's Approval* 4.07 No settlement of a claim made by or against a person under disability is binding on the person without the approval of the court. *Money to be Paid into Court* 4.08 (1) Any money payable to a person under disability under an order or a settlement shall be paid into court, unless the court orders otherwise, and shall afterwards be paid out or otherwise disposed of as ordered by the court. (2) If money is payable to a person under disability under an order or settlement, the court may order that the money shall be paid directly to the person, and payment made under the order discharges the obligation to the extent of the amount paid.	(ii) if no such person is available and able to act, the Public Guardian and Trustee shall be the litigation guardian; (e) is an absentee, (i) the committee of his or her estate appointed under the Absentees Act shall be the litigation guardian, (ii) if there is no such committee, a suitable person who has no interest contrary to that of the absentee may be the litigation guardian, or (iii) if no such person is available and able to act, the Public Guardian and Trustee shall be the litigation guardian; (f) is a person in respect of whom an order was made under subsection 72 (1) or (2) of the Mental Health Act as it read before April 3, 1995, the Public Guardian and Trustee shall be the litigation guardian *Duties of Litigation Guardian* 4.04 (1) A litigation guardian shall diligently attend to the interests of the person under disability and take all steps reasonably necessary for the protection of those interests, including the commencement and conduct of a defendant's claim. *Public Guardian and Trustee, Children's Lawyer* (2) The Public Guardian and Trustee or the Children's Lawyer may act as litigation guardian without filing the consent required by subrule 4.01 (3) or 4.02 (2). *Power of Court* 4.05 The court may remove or replace a litigation guardian at any time. *Setting Aside* 4.06 If an action has been brought against a person under disability and the action has not been defended by a litigation guardian, the court may set aside the noting of default or any judgment against the person under disability on such terms as are just, and may set aside any step that has been taken to enforce the judgment. The noting of default as against a person under a disability may be made only with leave of the Court. *Settlement Requires Court's Approval* 4.07 No settlement of a claim made by or against a person under disability is binding on the person without the approval of the court. *Money to be Paid into Court* 4.08 (1) Any money payable to a person under disability under an order or a settlement shall be paid into court, unless the court orders otherwise, and shall afterwards be paid out or otherwise disposed of as ordered by the court. (2) If money is payable to a person under disability under an order or settlement, the court may order that the money shall be paid directly to the person, and payment made under the order discharges the obligation to the extent of the amount paid.

EXISTING RULES	PROPOSED RULES
RULE 5 PARTNERSHIPS AND SOLE PROPRIETORSHIPS	RULE 5 PARTNERSHIPS AND SOLE PROPRIETORSHIPS
Partnerships	*Partnerships*
5.01 A proceeding by or against two or more persons as partners may be commenced using the firm name of the partnership.	5.01 A proceeding by or against two or more persons as partners may be commenced using the firm name of the partnership.
Defence	*Defence*
5.02 If a proceeding is commenced against a partnership using the firm name, the partnership's defence shall be delivered in the firm name and no person who admits being a partner at any material time may defend the proceeding separately, except with leave of the court.	5.02 If a proceeding is commenced against a partnership using the firm name, the partnership's defence shall be delivered in the firm name and no person who admits being a partner at any material time may defend the proceeding separately, except with leave of the court.
Notice to Alleged Partner	*Notice to Alleged Partner*
5.03 (1) In a proceeding against a partnership using the firm name, a plaintiff who seeks an order that would be enforceable personally against a person as a partner may serve the person with the claim, together with a notice to alleged partner (Form 5A).	5.03 (1) In a proceeding against a partnership using the firm name, a plaintiff who seeks an order that would be enforceable personally against a person as a partner may serve the person with the claim, together with a notice to alleged partner (Form)
(2) A person served as provided in subrule (1) is deemed to have been a partner at the material time, unless the person defends the proceeding separately denying having been a partner at the material time.	(2) A person served as provided in subrule (1) is deemed to have been a partner at the material time, unless the person defends the proceeding separately denying having been a partner at the material time.
Disclosure of Partners	*Disclosure of Partners*
5.04 (1) If a proceeding is commenced by or against a partnership using the firm name, any other party may serve a notice requiring the partnership to disclose immediately in writing the names and addresses of all partners constituting the partnership at a time specified in the notice; if a partner's present address is unknown, the partnership shall disclose the last known address.	5.04 (1) If a proceeding is commenced by or against a partnership using the firm name, any other party may serve a notice requiring the partnership to disclose immediately in writing the names and addresses of all partners constituting the partnership at a time specified in the notice; if a partner's present address is unknown, the partnership shall disclose the last known address.
Use of E-Mail	*Use of E-Mail*
(1.1) The disclosure required by subrule (1) may be made by e-mail as provided by rule 8.09 if the person making the disclosure is entitled to use electronic documents in the proceeding under rule 1.06.	(2) The disclosure required by subrule (1) may be made by e-mail as provided by rule 8.09 if the person making the disclosure is entitled to use electronic documents in the proceeding under rule 1.06.
	(3) Subrule (2) does not apply on and after January 1, **2006.**
Partnership's Failure to Comply	*Partnership's Failure to Comply*
(2) If a partnership fails to comply with a notice under subrule (1), its claim may be dismissed or the proceeding stayed or its defence may be struck out.	(4) If a partnership fails to comply with a notice under subrule (1), its claim may be dismissed or the proceeding stayed or its defence may be struck out.
Enforcement of Order	*Enforcement of Order*
5.05 (1) An order against a partnership using the firm name may be enforced against the partnership's property.	5.05 (1) An order against a partnership using the firm name may be enforced against the partnership's property.
(2) An order against a partnership using the firm name may also be enforced, if the order or a subsequent order so provides, against any person who was served as provided in rule 5.03 and who,	(2) An order against a partnership using the firm name may also be enforced, if the order or a subsequent order so provides, against any person who was served as provided in rule 5.03 and who,
(a) under that rule, is deemed to have been a partner at the material time;	(a) under that rule, is deemed to have been a partner at the material time;
(b) has admitted being a partner at that time; or	(b) has admitted being a partner at that time; or
(c) has been adjudged to have been a partner at that time.	(c) has been adjudged to have been a partner at that time.
Against Person not Served as Alleged Partner	*Against Person not Served as Alleged Partner*
(3) If, after an order has been made against a partnership using the firm name, the party obtaining it claims to be entitled to enforce it against any person alleged to be a partner other than a person who was served as provided in rule 5.03, the party may move before a judge for leave to do so; the judge may grant leave if the person's liability as a partner is not disputed or, if disputed, after the liability has been determined in such manner as the judge directs.	(3) If, after an order has been made against a partnership using the firm name, the party obtaining it claims to be entitled to enforce it against any person alleged to be a partner other than a person who was served as provided in rule 5.03, the party may bring a motion for leave to do so; the judge may grant leave if the person's liability as a partner is not disputed or, if disputed, after the liability has been determined in such manner as the judge directs.
Sole Proprietorships	*Sole Proprietorships*
5.06 (1) If a person carries on business in a business name other than his or her own name, a proceeding may be commenced by or against the person using the business name.	5.06 (1) If a person carries on business in a business name other than his or her own name, a proceeding may be commenced by or against the person using the business name.
(2) Rules 5.01 to 5.05 apply, with necessary modifications, to a proceeding by or against a sole proprietor using a business name, as though the sole proprietor were a partner and the business name were the firm name of a partnership.	(2) Rules 5.01 to 5.05 apply, with necessary modifications, to a proceeding by or against a sole proprietor using a business name, as though the sole proprietor were a partner and the business name were the firm name of a partnership.

EXISTING RULES	PROPOSED RULES
RULE 6 FORUM AND JURISDICTION 6.01 (1) An action shall be commenced and tried, (a) in the territorial division, (i) in which the cause of action arose, or (ii) in which the defendant or, if there are several defendants, in which any one of them resides or carries on business; or (b) at the court's place of sitting that is nearest to the place where the defendant or, if there are several defendants, where any one of them resides or carries on business. (2) If the court is satisfied that the balance of convenience substantially favours holding the trial of an action at another place than those described in subrule (1), the court may order that the action be tried at that other place. 6.02 A cause of action shall not be divided into two or more actions for the purpose of bringing it within the court's jurisdiction. 6.03 If, when an action is called for trial, the trial judge finds that the territorial division where he or she sits is not the proper place of trial, the action shall be tried in a place described in subclause 6.01 (1) (a) (i) or clause 6.01 (1) (b), unless the judge orders otherwise under subrule 6.01 (2).	RULE 6 FORUM AND JURISDICTION **Commencement** 6.01 (1) An action shall be commenced and tried, (a) in the territorial division, (i) in which the cause of action arose, or (ii) in which the defendant or, if there are several defendants, in which any one of them resides or carries on business; or (b) at the court's place of sitting that is nearest to the place where the defendant or, if there are several defendants, where any one of them resides or carries on business. **Changing Place of Trial** **6.02(1)** If the court is satisfied that the balance of convenience substantially favours holding the trial of an action at another place than those described in subrule (1), the court may order that the action be tried at that other place. **(2) If, at settlement conference**, it appears that the territorial division where the action was commenced is not the proper place of trial, the action shall be tried in a place described in subclause 6.01 (1) (a) (i) or clause 6.01 (1) (b), unless a judge orders otherwise under subrule **6.02(1)** 6.03 A cause of action shall not be divided into two or more actions for the purpose of bringing it within the court's jurisdiction.
RULE 7 COMMENCEMENT OF PROCEEDINGS *Plaintiff's Claim* 7.01 (1) An action shall be commenced by filing a plaintiff's claim (Form 7A) with the clerk, together with a copy of the claim for each defendant. *Contents of Claim, Attachments* (2) The following requirements apply to the claim: 1. It shall contain the following information, in concise and non-technical language: i. The full names of the parties to the proceeding and, if relevant, the capacity in which they sue or are sued. ii. The nature of the claim, with reasonable certainty and detail, including the date, place and nature of the occurrences on which the claim is based. iii. The amount of the claim and the relief requested. iv. The name, address and telephone number, and fax number if any, of the lawyer or agent representing the plaintiff or, if the plaintiff is unrepresented, the plaintiff's address and telephone number, and fax number if any. v. The address where the plaintiff believes the defendant may be served. 2. If the plaintiff's claim is based in whole or in part on a document, a copy of the document shall be attached to each copy of the claim, unless it is unavailable, in which case the claim shall state the reason why the document is not attached. *E-mail Address* The claim may also contain the e-mail address of the lawyer or agent representing the plaintiff or, if the plaintiff is unrepresented, the e-mail address of the plaintiff. *Issuing Claim* 7.03 (1) On receiving the plaintiff's claim, the clerk shall immediately issue it by dating, signing and sealing it and assigning it a court file number. (2) The original of the claim shall remain in the court file and the copies shall be given to the plaintiff for service on the defendant	RULE 7 COMMENCEMENT OF PROCEEDINGS *Plaintiff's Claim* 7.01 (1) An action shall be commenced by filing a plaintiff's claim (Form 7A) with the **registrar**, together with a copy of the claim for each defendant. *Contents of Claim, Attachments* (2) The following requirements apply to the claim: **(a)** It shall contain the following information, in concise and non-technical language: i. The full names of the parties to the proceeding and, if relevant, the capacity in which they sue or are sued. ii. The nature of the claim, with reasonable certainty and detail, including the date, place and nature of the occurrences on which the claim is based. iii. The amount of the claim and the relief requested. iv. The name, address, telephone number, fax number and **email address** if any, of the lawyer or agent representing the plaintiff or, if the plaintiff is **self-**represented, the plaintiff's address and telephone number, and fax number **and e-mail address** if any. v. The address where the plaintiff believes the defendant may be served. **(b)** If the plaintiff's claim is based in whole or in part on a document, a copy of the document shall be attached to each copy of the claim, unless it is unavailable, in which case the claim shall state the reason why the document is not attached. **Court Seal** **7.02: All copies of claims or defences served or filed must have the Court's seal thereon at time of issue.** *Issuing Claim* 7.03 (1) On receiving the plaintiff's claim, the **registrar** shall immediately issue it by dating, signing and sealing it and assigning it a court file number. (2) The original of the claim shall remain in the court file and the copies shall be given to the plaintiff for service on the defendant.

EXISTING RULES	PROPOSED RULES
RULE 8 SERVICE *Service of Particular Documents* *Plaintiff's or Defendant's Claim* 8.01 (1) A plaintiff's claim or defendant's claim (Form 7A or 10A) shall be served personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03. *Time for Service of Claim* (2) A claim shall be served within six months after the date it is issued, but the court may extend the time for service, before or after the six months has elapsed. *Defence* (3) A defence shall be served by the clerk, by mail or by fax. *Use of E-Mail* (3.1) The service required by subrule (3) may be made by e-mail in accordance with rule 8.09 if the person on whom the document is served is entitled to use electronic documents in the proceeding under rule 1.06. *Notice of Default Judgment* (4) A notice of default judgment (Form 11A) shall be served by the clerk, by mail or fax, on all parties named in the claim. *Use of E-Mail* (4.1) The service required by subrule (4) may be made by e-mail in accordance with rule 8.09 if the person on whom the document is served is entitled to use electronic documents in the proceeding under rule 1.06. *Summons to Witness* (5) A summons to witness (Form 18A) shall be served personally by the party who requires the presence of the witness, or by the party's lawyer or agent; at the time of service, attendance money in accordance with the tariff shall be paid or tendered to the witness. *Notice of Garnishment* (6) A notice of garnishment (Form 20E) shall be served by the creditor, (a) on the debtor, by mail, personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03; and (b) on the garnishee, by mail, personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03. *Notice of Judgment Debtor Examination* (7) A notice of examination of a judgment debtor (Form 20H) may be served by the creditor by mail, personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03. (8) The notice shall be served at least 30 days before the date fixed for the examination. *Notice of Contempt Hearing* (9) A notice of a contempt hearing (Form 20I) shall be served by the creditor on the debtor personally as provided in rule 8.02. *Other Documents* (10) A document not referred to in subrules (1) to (9) may be served by mail, by fax, personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03, unless the court orders otherwise.	RULE 8 SERVICE Service of Particular Documents **Claim** 8.01 (1) A claim (Form 7A or 10A) shall be served personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03. *Time for Service of Claim* (2) A claim shall be served within six months after the date it is issued, but the court may extend the time for service, before or after the six months has elapsed. *Defence* (3) A defence shall be served by the **registrar**, by mail, **by courier** or by fax. *Use of E-Mail* **(4)** The service required by subrule (3) may be made by e-mail in accordance with rule 8.09 if the person on whom the document is served is entitled to use electronic documents in the proceeding under rule 1.06. *Notice of Default Judgment* **(5)** A notice of default judgment (Form 11A) shall be served by the **registrar**, by mail **by courier** or fax, on all parties named in the claim. *Use of E-Mail* **(6)** The service required by subrule **(5)** may be made by e-mail in accordance with rule 8.**10** if the person on whom the document is served is entitled to use electronic documents in the proceeding under rule 1.06. *Non-Application* **(7)** Subrules **(4)** and **(6)** do not apply on and after January 1, **2006**. *Summons to Witness* **(8)** A summons to witness (Form 18A) shall be served personally by the party who requires the presence of the witness, or by the party's lawyer or agent; at the time of service, attendance money in accordance with the tariff shall be paid or tendered to the witness. *Notice of Garnishment* **(9)** A notice of garnishment (Form 20E) shall be served by the creditor, (a) on the debtor, by mail**, by courier**, personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03; and (b) on the garnishee, by mail, **by courier**, personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03. *Notice of Judgment Debtor Examination* **(10)** A notice of examination of a judgment debtor (Form 20H) **and financial disclosure statement (Form 21P) shall** be served by mail, **by courier,** personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03. **(11)** The notice shall be served at least 30 days before the date fixed for the examination. *Notice of Contempt Hearing* **(12)** A notice of a contempt hearing (Form 20I) shall be served by the creditor on the debtor personally as provided in rule 8.02. *Other Documents* **(13)** A document not referred to in subrules (1) to **(12)** may be served by mail, **by courier,** by fax, personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03, unless the court orders otherwise.

EXISTING RULES	PROPOSED RULES
Use of E-Mail (11) A document not referred to in subrules (1) to (9) may also be served by e-mail in accordance with rule 8.09 if the person serving the document is entitled to use electronic documents in the proceeding under rule 1.06. *Non-Application* (12) Subrule 11 does not apply on or after January 1, 2004.	*Use of E-Mail* **(14)** A document not referred to in subrules (1) to **(12)** may also be served by e-mail in accordance with rule 8.09 if the person serving the document is entitled to use electronic documents in the proceeding under rule 1.06. *Non-Application* **(15)** Subrule **(14)** does not apply on and after January 1**, 2006.**
Personal Service 8.02 If a document is to be served personally, service shall be made, *Individual* (a) on an individual, other than a person under disability, by leaving a copy of the document with him or her; *Municipality* (b) on a municipal corporation, by leaving a copy of the document with the chair, mayor, warden or reeve of the municipality, with the clerk or deputy clerk of the municipality or with a lawyer for the municipality; *Corporation* (c) on any other corporation, by leaving a copy of the document with an officer, director or agent of the corporation, or with a person at any place of business of the corporation who appears to be in control or management of the place of business; *Board or Commission* (d) on a board or commission, by leaving a copy of the document with a member or officer of the board or commission; *Person Outside Ontario Carrying on Business in Ontario* (e) on a person outside Ontario who carries on business in Ontario, by leaving a copy of the document with anyone carrying on business in Ontario for the person; *Crown in Right of Canada* (f) on Her Majesty the Queen in right of Canada, in accordance with subsection 23 (2) of the Crown Liability and Proceedings Act (Canada); *Crown in Right of Ontario* (g) on Her Majesty the Queen in right of Ontario, in accordance with section 10 of the Proceedings Against the Crown Act; *Absentee* (h) on an absentee, by leaving a copy of the document with the absentee's committee, if one has been appointed or, if not, with the Public Guardian and Trustee; *Minor* (i) on a minor, by leaving a copy of the document with the minor and, if the minor resides with a parent or other person having his or her care or lawful custody, by leaving another copy of the document with the parent or other person; *Mentally Incapable Person* (j) on a mentally incapable person, (i) if there is a guardian or an attorney acting under a validated power of attorney for personal care with authority to act in the proceeding, by leaving a copy of the document with the guardian or attorney, (ii) if there is no guardian or attorney acting under a validated power of attorney for personal care with authority to act in the proceeding but there is an attorney under a power of attorney with authority to act in the proceeding, by leaving a copy of the document with the attorney and leaving an additional copy with the person, (iii) if there is neither a guardian nor an attorney with authority to act in the proceeding, by leaving a copy of the document bearing the person's name and address with the Public Guardian and Trustee and leaving an additional copy with the person;	**How to Serve Personally** 8.02 If a document is to be served personally, service shall be made, *Individual* (a) on an individual, other than a person under disability, by leaving a copy of the document with him or her; *Municipality* (b) on a municipal corporation, by leaving a copy of the document with the chair, mayor, warden or reeve of the municipality, with the clerk or deputy clerk of the municipality or with a lawyer for the municipality; *Corporation* (c) on any other corporation, by leaving a copy of the document with an officer, director or agent of the corporation, or with a person at any place of business of the corporation who appears to be in control or management of the place of business; *Board or Commission* (d) on a board or commission, by leaving a copy of the document with a member or officer of the board or commission; *Person Outside Ontario Carrying on Business in Ontario* (e) on a person outside Ontario who carries on business in Ontario, by leaving a copy of the document with anyone carrying on business in Ontario for the person; *Crown in Right of Canada* (f) on Her Majesty the Queen in right of Canada, in accordance with subsection 23 (2) of the Crown Liability and Proceedings Act (Canada); *Crown in Right of Ontario* (g) on Her Majesty the Queen in right of Ontario, in accordance with section 10 of the Proceedings Against the Crown Act; *Absentee* (h) on an absentee, by leaving a copy of the document with the absentee's committee, if one has been appointed or, if not, with the Public Guardian and Trustee; *Minor* (i) on a minor, by leaving a copy of the document with the minor and, if the minor resides with a parent or other person having his or her care or lawful custody, by leaving another copy of the document with the parent or other person; *Mentally Incapable Person* (j) on a mentally incapable person, (i) if there is a guardian or an attorney acting under a validated power of attorney for personal care with authority to act in the proceeding, by leaving a copy of the document with the guardian or attorney, (ii) if there is no guardian or attorney acting under a validated power of attorney for personal care with authority to act in the proceeding but there is an attorney under a power of attorney with authority to act in the proceeding, by leaving a copy of the document with the attorney and leaving an additional copy with the person, (iii) if there is neither a guardian nor an attorney with authority to act in the proceeding, by leaving a copy of the document bearing the person's name and address with the Public Guardian and Trustee and leaving an additional copy with the person;

EXISTING RULES	PROPOSED RULES
Partnership k) on a partnership, by leaving a copy of the document with any one or more of the partners or with a person at the principal place of business of the partnership who appears to be in control or management of the place of business; and	*Partnership* (k) on a partnership, by leaving a copy of the document with any one or more of the partners or with a person at the principal place of business of the partnership who appears to be in control or management of the place of business; and
Sole Proprietorship (l) on a sole proprietorship, by leaving a copy of the document with the sole proprietor or with a person at the principal place of business of the sole proprietorship who appears to be in control or management of the place of business.	*Sole Proprietorship* (l) on a sole proprietorship, by leaving a copy of the document with the sole proprietor or with a person at the principal place of business of the sole proprietorship who appears to be in control or management of the place of business.
Alternatives to Personal Service 8.03 (1) If a document is to be served by an alternative to personal service, service shall be made in accordance with subrule (2), (3) or (5); in the case of a plaintiff's claim or defendant's claim, service may also be made in accordance with subrule (7	**Alternative Methods of Service** 8.03 (1) If a document is to be served by an alternative to personal service, service shall be made in accordance with subrule (2), (3) or (5); in the case of a claim or claim, service may also be made in accordance with subrule (7).
At Place of Residence (2) If an attempt is made to effect personal service at a person's place of residence and for any reason personal service cannot be effected, the document may be served by, (a) leaving a copy in a sealed envelope addressed to the person at the place of residence with anyone who appears to be an adult member of the same household; and (b) on the same day or the following day, mailing another copy of the document to the person at the place of residence.	*At Place of Residence* (2) If an attempt is made to effect personal service at a person's place of residence and for any reason personal service cannot be effected, the document may be served by, (a) leaving a copy in a sealed envelope addressed to the person at the place of residence with anyone who appears to be an adult member of the same household; and (b) on the same day or the following day, mailing **or sending by courier** another copy of the document to the person at the place of residence.
Corporation (3) If the head office or principal place of business of a corporation or, in the case of an extra-provincial corporation, the attorney for service in Ontario cannot be found at the last address recorded with the Ministry of Consumer and Commercial Relations, service may be made on the corporation by mailing a copy of the document to the corporation or to the attorney for service in Ontario, as the case may be, at that address.	*Corporation* (3) If the head office or principal place of business of a corporation or, in the case of an extra-provincial corporation, the attorney for service in Ontario cannot be found at the last address recorded with the Ministry of Consumer and Commercial Relations, service may be made on the corporation by mailing **or sending by courier** a copy of the document to the corporation or to the attorney for service in Ontario, as the case may be, at that address **and by mailing or sending by courier a copy of the document to each director as recorded with the Ministry of Consumer and Commercial Relations at the address listed for them by the Ministry**.
When Effective (4) Service made under subrule (2) or (3) is effective on the fifth day after the document is mailed.	*When Effective* (4) Service made under subrule (2) or (3) is effective **if a document is mailed** on the fifth day after the document is mailed **or, if a document is sent by courier, on the second day after the document is couriered**.
Acceptance of Service by Lawyer (5) Service on a party who is represented by a lawyer may be made by leaving a copy of the document with the lawyer or an employee in the lawyer's office, but service under this subrule is effective only if the lawyer or employee endorses on the document or a copy of it an acceptance of service and the date of the acceptance.	*Acceptance of Service by Lawyer* (5) Service on a party who is represented by a lawyer may be made by leaving a copy of the document with the lawyer or an employee in the lawyer's office, but service under this subrule is effective only if the lawyer or employee endorses on the document or a copy of it an acceptance of service and the date of the acceptance.
(6) By accepting service the lawyer is deemed to represent to the court that he or she has the client's authority to accept service.	(6) By accepting service the lawyer is deemed to represent to the court that he or she has the client's authority to accept service.
Service of Claim by Mail to Last Known Address (7) Service of a plaintiff's claim or defendant's claim may be made by sending a copy of it by mail, in an envelope showing the sender's return address, to the last known address of the person to be served.	*Service of Claim by Mail* **or Courier** *to Last Known Address* (7) Service of **a claim** may be made by sending a copy of it by mail **or courier,** in an envelope showing the sender's return address, to the last known address of the person to be served.
(8) Service under subrule (7) is deemed to have been effected on the 20th day after the date of mailing if an affidavit of service (Form 8B), (a) indicates that the deponent believes the address to which the claim is sent to be the last known address of the person to be served, and states the reasons for the belief; (b) indicates that the claim has not been returned to the deponent; and (c) indicates that the deponent has no reason to believe that the person to be served did not receive the claim.	(8) Service under subrule (7) is deemed to have been effected on the 20th day after the date of mailing **or couriering** if an affidavit of service (Form 8B) **indicates**, (a) that the deponent believes the address to which the claim is sent to be the last known address of the person to be served, and states the reasons for the belief; (b) that the claim has not been returned to the deponent; and (c) that the deponent has no reason to believe that the person to be served did not receive the claim.
(9) The affidavit of service shall not be completed before the day referred to in subrule (8).	(9) The affidavit of service shall not be completed before the day referred to in subrule (8).

EXISTING RULES	PROPOSED RULES
Substituted Service 8.04 If it is shown that it is impractical to effect prompt service of a claim personally or by an alternative to personal service, the court may allow substituted service.	*Substituted Service* 8.04 If it is shown that it is impractical to effect prompt service of a claim personally or by an alternative to personal service, the court may allow substituted service.
Service Outside Ontario 8.05 If the defendant is outside Ontario, the court may allow as costs of the action the costs reasonably incurred in effecting service of the claim on the defendant there.	*Service Outside Ontario* 8.05 If the defendant is outside Ontario, the court may allow as costs of the action the costs reasonably incurred in effecting service of the claim on the defendant there.
Proof of Service 8.06 The following constitute proof of service of a document: 1. If the document was served by a bailiff or bailiff's officer, a certificate of service (Form 8A) endorsed on a copy of the document. If the document was served by e-mail, a certificate of service that complies with subrule (2). 2. In all other cases, an affidavit of service (Form 8B) made by the person effecting the service.	*Proof of Service* 8.06 (1) The following constitute proof of service of a document: **(a)** If the document was served by e-mail, a certificate of service that complies with subrule (2). **(b)** In all other cases, an affidavit of service (Form 8B) made by the person effecting the service. *Non-Application* **(c)** Paragraph **(a)** of subrule (1) does not apply on and after January 1, **2006.**
Certificate of Service by E-Mail (2) In a certificate of service by e-mail, the person who served the document shall state that he or she, (a) served the document by e-mailing a copy in accordance with rule 8.09, and received by e-mail an acceptance of service with the date and time of acceptance; (b) has sworn an affidavit of service (Form 8C); (c) will keep the affidavit until the proceeding, including any appeals, is finally disposed of, or until the clerk requests that it be filed, whichever is earlier; and (d) will file the affidavit forthwith on the clerk's request. (3) When any person files a requisition (Form 1C) to inspect the affidavit, the clerk shall make a request under clause (2) (d).	*Certificate of Service by E-Mail* (2) In a certificate of service by e-mail, the person who served the document shall state that he or she, (a) served the document by e-mailing a copy in accordance with rule 8.**10**, and received by e-mail an acceptance of service with the date and time of acceptance; (b) has sworn an affidavit of service (Form 8C); (c) will keep the affidavit until the proceeding, including any appeals, is finally disposed of, or until the **registrar** requests that it be filed, whichever is earlier; and (d) will file the affidavit forthwith on the **registrar**'s request. (3) When any person files a requisition (Form 1C) to inspect the affidavit, the **registrar** shall make a request under clause (2) (d).
Service by Mail 8.07 (1) If a document is to be sent by mail under these rules, it shall be sent, by regular lettermail or registered mail, to the last address of the person or of the person's lawyer or agent that is, (a) on file with the court, if the document is to be served by the clerk; (b) known to the sender, if the document is to be served by any other person.	*Non-Application* (4) Subrules (2) and (3) do not apply on and after January 1, **2006.** ***Service by Mail*** 8.07 (1) If a document is to be sent by mail under these rules, it shall be sent, by regular lettermail or registered mail, to the last address of the person or of the person's lawyer or agent that is, (a) on file with the court, if the document is to be served by the **registrar**; (b) known to the sender, if the document is to be served by any other person.
When Effective (2) Service of a document by mail is deemed to be effective on the fifth day following the date of mailing.	*When Effective* (2) Service of a document by mail is deemed to be effective on the fifth day following the date of mailing.
Exception (3) Subrule (2) does not apply when a claim is served by mail under subrule 8.03 (7).	*Exception* (3) Subrule (2) does not apply when a claim is served by mail under subrule 8.03 (7).
Service by Fax 8.08 (1) Service of a document by fax is deemed to be effective, (a) on the day of transmission, if transmission takes place before 5 p.m. on a day that is not a holiday; (b) on the next day that is not a holiday, in any other case. (2) A document containing 16 or more pages, including the cover page and the backsheet, may be served by fax only between 5 p.m. and 8 a.m. the following day, unless the party to be served consents in advance.	**Service by Courier** **8.08(1) If a document is to be sent by courier under these rules, it shall be sent, by commercial courier delivery service, to the last address of the person or of the person's lawyer or agent that is,** **(a) on file with the court, if the document is to be served by the registrar;** **(b) known to the sender, if the document is to be served by any other person.**
Service by E-Mail 8.09 (1) Service of a document by e-mail may be made by e-mailing a copy as an attachment to an e-mail message that includes, (a) the sender's name, address, telephone number, fax number and e-mail address; (b) the date and time of transmission; and (c) the name and telephone number of a person to contact in the event of transmission problems.	*When Effective* **(2) Service of a document by courier is deemed to be effective on the second day following the date of couriering.**
Acceptance (2) Service under subrule (1) is effective only if the person on whom the document is served provides by e-mail a reply accepting service and showing the date and time of acceptance.	*Exception* **(3) Subrule (2) does not apply when a claim is served by courier under subrule 8.03 (7).**

EXISTING RULES	PROPOSED RULES
Exception (3) Subrule (2) does not apply to service by the clerk under any of the following provisions: 1. Subrule 8.01 (3.1) (defence). 2. Subrule 8.01 (4.1) (default judgment). 3. Subrule 9.03 (4.1) (notice of hearing). 4. Subrule 16.01 (1.1) (notice of trial). 5. Subrule 20.09 (11.1) (notice re consolidation order). 6. Clause 20.10 (10) (a) (notice of contempt hearing). *When Effective* (4) Service of a document by e-mail is deemed to be effective, (a) if the time of acceptance shown in the reply is after 5 p.m. and before midnight, on the following day; (b) in any other case, on the date of acceptance shown in the reply. *Non-Application* (5) Subrules (1) to (4) do not apply on and after January 1, 2004. *Failure to Receive Document* 8.09 A person who has been served or who is deemed to have been served with a document in accordance with these rules is nevertheless entitled to show, on a motion to set aside **or amend** the consequences of default, on a motion for an extension of time or in support of a request for an adjournment, that the document, (a) did not come to the person's notice; or (b) came to the person's notice only at some time later than when it was served or is deemed to have been served.	*Service by Fax* 8.09 (1) Service of a document by fax is deemed to be effective, (a) on the day of transmission, if transmission takes place before 5 p.m. on a day that is not a holiday; (b) on the next day that is not a holiday, in any other case. (2) A document containing 16 or more pages, including the cover page and the backsheet, may be served by fax only between 5 p.m. and 8 a.m. the following day, unless the party to be served consents in advance. *Service by E-Mail* 8.10 (1) Service of a document by e-mail may be made by e-mailing a copy as an attachment to an e-mail message that includes, (a) the sender's name, address, telephone number, fax number and e-mail address; (b) the date and time of transmission; and (c) the name and telephone number of a person to contact in the event of transmission problems. *Acceptance* (2) Service under subrule (1) is effective only if the person on whom the document is served provides by e-mail a reply accepting service and showing the date and time of acceptance. *Exception* (3) Subrule (2) does not apply to service by the **registrar** under any of the following provisions: 1. Subrule 8.01 (3) (defence). 2. Subrule 8.01 (**5**) (default judgment). 3. Subrule 9.03 (4) (notice of hearing). 4. Subrule 17.01 (notice of trial). 5. Subrule 21.09 (**11**) (notice re consolidation order). 6. Clause 21.**11**(**2**) (notice of contempt hearing). *When Effective* (4) Service of a document by e-mail is deemed to be effective, (a) if the time of acceptance shown in the reply is after 5 p.m. and before midnight, on the following day; (b) in any other case, on the date of acceptance shown in the reply. *Non-Application* (5) Subrules (1) to (4) do not apply on and after January 1, **2006**. *Failure to Receive Document* **8.11** A person who has been served or who is deemed to have been served with a document in accordance with these rules is nevertheless entitled to show, on a motion to set aside **or amend** the consequences of default, on a motion for an extension of time or in support of a request for an adjournment, that the document, (a) did not come to the person's notice; or (b) came to the person's notice only at some time later than when it was served or is deemed to have been served. **Address to be Kept Current** **8.12 The parties shall keep the Court and all other parties informed of their current address. A party, upon changing address, shall give written notice of the change of address to the Court and all parties within 7 days.**

EXISTING RULES	PROPOSED RULES
RULE 9 DEFENCE *Defence* 9.01 (1) A defendant who wishes to dispute a plaintiff's claim shall file a defence (Form 9A), with a copy for every plaintiff (unless subrule 1.06 (13) applies because the defence is filed electronically), with the clerk within 20 days of being served with the claim. (2) On receiving the defence, the clerk shall serve it as described in subrule 8.01 (3) or (3.1). *Contents of Defence, Attachments* 9.02 (1) The following requirements apply to the defence: 1. It shall contain the following information: i. The reasons why the defendant disputes the plaintiff's claim, expressed in concise non-technical language with a reasonable amount of detail. ii. The defendant's name, address and telephone number, and fax number if any. iii. If the defendant is represented by a lawyer or agent, that person's name, address and telephone number, and fax number if any. 2. If the defence is based in whole or in part on a document, a copy of the document shall be attached to each copy of the defence, unless it is unavailable, in which case the defence shall state the reason why the document is not attached. *E-mail Address* (2) The defence may also contain the e-mail address of the lawyer or agent representing the defendant or, if the defendant is unrepresented, the e-mail address of the defendant. *Admission of Liability and Proposal of Terms of Payment* 9.03 (1) A defendant who admits liability for all or part of the plaintiff's claim but wishes to arrange terms of payment may in the defence admit liability and propose terms of payment. *Where No Dispute* (2) If the plaintiff does not dispute the proposal within the 20-day period referred to in subrule (3), (a) the defendant shall make payment in accordance with the proposal as if it were a court order; (b) in case of failure to make payment in accordance with the proposal, the clerk shall sign judgment for the unpaid balance of the undisputed amount on the filing of an affidavit by the plaintiff swearing to the default and stating the amount paid and the unpaid balance. *Dispute* (3) The plaintiff may dispute the proposal within 20 days after service of the defence by filing with the clerk and serving on the defendant a request for a hearing (Form 9B) before a referee or other person appointed by the court. (4) The clerk shall fix a time for the hearing, allowing for a reasonable notice period after the date the request is served, and serve a notice of hearing on the parties. *Manner of Service* (4.1) The notice of hearing shall be served by mail or fax, or by e-mail in accordance with rule 8.09 if the person on whom it is served is entitled to use electronic documents in the proceeding under rule 1.06. *Order* (5) On the hearing, the referee or other person may make an order (Form 9C) as to terms of payment by the defendant.	RULE 9 DEFENCES *Defence* 9.01 (1) A defendant who wishes to dispute a plaintiff's claim shall file a defence (Form 9A), with a copy for every plaintiff (unless subrule 1.06 (**11**) applies because the defence is filed electronically), with the **registrar** within 20 days of being served with the claim. (2) On receiving the defence, the **registrar** shall serve it as described in subrule 8.01 (3) or (4). *Non-Application* (3) The reference to subrule 8.01 (4) in subrule (2) of this rule does not apply on and after January 1, **2006**. *Contents of Defence, Attachments* 9.02 (1) The following requirements apply to the defence: **(a)**. It shall contain the following information: i. The reasons why the defendant disputes the plaintiff's claim, expressed in concise non-technical language with a reasonable amount of detail. **ii. The name, address, telephone number, and fax number and email address if any, of the lawyer or agent representing the defendant or, if the defendant is self represented, the defendant's name, address and telephone number, and fax number and email address if any.** **(b)** If the defence is based in whole or in part on a document, a copy of the document shall be attached to each copy of the defence, unless it is unavailable, in which case the defence shall state the reason why the document is not attached. *Admission of Liability and Proposal of Terms of Payment* 9.03 (1) A defendant who admits liability for all or part of the plaintiff's claim but wishes to arrange terms of payment may in the defence admit liability and propose terms of payment. *Where No Dispute* (2) If the plaintiff does not dispute the proposal within the 20-day period referred to in subrule (3), (a) the defendant shall make payment in accordance with the proposal as if it were a court order; and (b) in case of failure to make payment in accordance with the proposal, the **registrar** shall sign judgment for the unpaid balance of the undisputed amount on the filing of an affidavit by the plaintiff swearing to the default and stating the amount paid and the unpaid balance. *Dispute* (3) The plaintiff may dispute the proposal within 20 days after service of the defence by filing with the **registrar** and serving on the defendant a request for a hearing (Form 9B) before a referee or other person appointed by the court. (4) The **registrar** shall fix a time for the hearing, allowing for a reasonable notice period after the date the request is served, and serve a notice of hearing on the parties. *Manner of Service* **(5)** The notice of hearing shall be served by mail or courier or fax. **(6) Alternatively, the notice of hearing may be served** by e-mail in accordance with rule 8.10 if the person on whom it is served is entitled to use electronic documents in the proceeding under rule 1.06. *Non-Application* (7) Subrule (6) does not apply on and after January 1, **2006.** *Order* (8) On the hearing, the referee or other **designated** person may make an order (Form 9C) as to terms of payment by the defendant.

EXISTING RULES	PROPOSED RULES
Failure to Appear, Default Judgment (6) If the defendant does not appear at the hearing, the clerk may sign default judgment against the defendant for the part of the claim that has been admitted and shall serve a notice of default judgment (Form 11A) on the defendant in accordance with subrule 8.01 (4) or (4.1). *Failure to Make Payments* (7) Unless the referee or other person specifies otherwise in the order as to terms of payment, if the defendant fails to make payment in accordance with the order, the clerk shall sign judgment for the unpaid balance on the filing of an affidavit by the plaintiff swearing to the default and stating the amount paid and the unpaid balance.	*Failure to Appear, Default Judgment* (9) If the defendant does not appear at the hearing, the **registrar** may sign default judgment against the defendant for the part of the claim that has been admitted and shall serve a notice of default judgment (Form 11A) on the defendant in accordance with subrule 8.01 **(5)** or **(6)**. *Non-Application* (10) The reference to subrule 8.01 **(6)** in subrule (9) of this rule does not apply on and after January 1**, 2006**. *Failure to Make Payments* (11) Unless the referee or other **designated** person specifies otherwise in the order as to terms of payment, if the defendant fails to make payment in accordance with the order, the **registrar** shall sign judgment for the unpaid balance on the filing of an affidavit by the plaintiff swearing to the default and stating the amount paid and the unpaid balance.

EXISTING RULES	PROPOSED RULES
RULE 10 DEFENDANT'S CLAIM	RULE 10 DEFENDANT'S CLAIM
Defendant's Claim	*Defendant's Claim*
10.01 (1) A defendant may make a claim,	10.01 (1) A defendant may make a claim,
(a) against the plaintiff;	(a) against the plaintiff;
(b) against any other person,	(b) against any other person,
(i) arising out of the transaction or occurrence relied upon by the plaintiff, or	(i) arising out of the transaction or occurrence relied upon by the plaintiff, or
(ii) related to the plaintiff's claim; or	(ii) related to the plaintiff's claim; or
(c) against the plaintiff and against another person in accordance with clause (b).	(c) against the plaintiff and against another person in accordance with clause (b).
(2) The defendant's claim shall be in Form 10A and may be issued when a defence is filed or at any time afterwards before trial or default judgment.	(2) The defendant's claim shall be in Form 10A and may be issued within twenty days of the defence being filed or with leave of the Court.
Copies	*Copies*
(3) The defendant shall provide a copy of the defendant's claim to the court.	(3) The defendant shall provide a copy of the defendant's claim to the court.
Contents of Defendant's Claim, Attachments	*Contents of Defendant's Claim, Attachments*
(4) The following requirements apply to the defendant's claim:	(4) The following requirements apply to the defendant's claim:
1. It shall contain the following information:	**(a).** It shall contain the following information:
i. The names of the parties to the plaintiff's claim and to the defendant's claim and, if relevant, the capacity in which they sue or are sued.	i. The names of the parties to the plaintiff's claim and to the defendant's claim and, if relevant, the capacity in which they sue or are sued.
ii. The nature of the claim, expressed in concise non-technical language with a reasonable amount of detail, including the date, place and nature of the occurrences on which the claim is based.	ii. The nature of the claim, expressed in concise non-technical language with a reasonable amount of detail, including the date, place and nature of the occurrences on which the claim is based.
iii. The amount of the claim and the relief requested.	iii. The amount of the claim and the relief requested.
iv. The defendant's name, address and telephone number, and fax number if any.	**iv. The name, address, telephone number, and fax number and email address if any of the lawyer or agent of the plaintiff-by-defendant's claim, or if self represented, the plaintiff-by defendant's claim's name, address and telephone number, and fax number and email address if any.**
v. If the defendant is represented by a lawyer or agent, that person's name, address and telephone number, and fax number if any.	v. The address where the defendant believes each person against whom the claim is made may be served.
vi. The address where the defendant believes each person against whom the claim is made may be served.	**vi. The Court's file number for the plaintiff's claim**
2. If the defendant's claim is based in whole or in part on a document, a copy of the document shall be attached to each copy of the claim, unless it is unavailable, in which case the claim shall state the reason why the document is not attached.	**(b)** If the defendant's claim is based in whole or in part on a document, a copy of the document shall be attached to each copy of the claim, unless it is unavailable, in which case the claim shall state the reason why the document is not attached.
E-mail Address	*Issuance*
(5) The defendant's claim may also contain the e-mail address of the lawyer or agent representing the defendant or, if the defendant is unrepresented, the e-mail address of the defendant.	**(5)** On receiving the defendant's claim, the **registrar** shall immediately issue it by dating, signing and sealing it, shall assign it the same court file number as the plaintiff's claim and shall place the original in the court file.
Issuance	*Electronic Documents*
(6) On receiving the defendant's claim, the clerk shall immediately issue it by dating, signing and sealing it, shall assign it the same court file number as the plaintiff's claim and shall place the original in the court file.	**(6)** If the defendant's claim is filed electronically under rule 1.06, subrules 1.06 **(12)**, **(13)** and **(14)** apply.
Electronic Documents	*Non-Application*
(7) If the defendant's claim is filed electronically under rule 1.06, subrules 1.06 (14), (15) and (16) apply.	**(7)** Subrule **(6)** does not apply on and after January 1, **2006.**
Non-Application	*Service*
(8) Subrule (7) does not apply on and after January 1, 2004.	10.02 A defendant's claim shall be served by the defendant on every person against whom it is made, in accordance with subrules 8.01 (1) and (2).
Service	*Defence to Defendant's Claim*
10.02 A defendant's claim shall be served by the defendant on every person against whom it is made, in accordance with subrules 8.01 (1) and (2).	10.03 (1) A party who wishes to dispute the defendant's claim may, within 20 days after service, file a defence (Form 10A) with the **registrar**, together with a copy for each of the other parties or persons against whom the defendant's or plaintiff's claim is made (unless subrule 1.06 (13) applies because the defence is filed electronically).
Defence to Defendant's Claim	(2) On receiving the defence to a defendant's claim, the **registrar** shall retain the original in the court file and shall serve a copy on each party in accordance with subrule 8.01 (3) or (**4**).
10.03 (1) A party who wishes to dispute the defendant's claim may, within 20 days after service, file a defence (Form 9A) with the clerk, together with a copy for each of the other parties or persons against whom the defendant's or plaintiff's claim is made (unless subrule 1.06 (13) applies because the defence is filed electronically).	
(2) On receiving the defence to a defendant's claim, the clerk shall retain the original in the court file and shall serve a copy on each party in accordance with subrule 8.01 (3) or (3.1).	

EXISTING RULES	PROPOSED RULES
Non-Application (3) The reference to subrule 8.01 (3.1) in subrule (2) of this rule does not apply on and after January 1, 2004.	*Non-Application* (3) The reference to subrule 8.01 (**4**) in subrule (2) of this rule does not apply on and after January 1, **2006**.
Defendant's Claim to be Tried with Main Action 10.04 (1) A defendant's claim shall be tried and disposed of at the trial of the action, unless the court orders otherwise.	*Defendant's Claim to be Tried with Main Action* 10.04 (1) A defendant's claim shall be tried and disposed of at the trial of the action, unless the court orders otherwise.
Exception (2) If it appears that a defendant's claim may unduly complicate or delay the trial of the action or cause undue prejudice to a party, the court may order separate trials or direct that the defendant's claim proceed as a separate action.	*Exception* (2) If it appears that a defendant's claim may unduly complicate or delay the trial of the action or cause undue prejudice to a party, the court may order separate trials or direct that the defendant's claim proceed as a separate action.
Rights of Third Party (3) If the defendant alleges, in a defendant's claim, that a third party is liable to the defendant for all or part of the plaintiff's claim in the action, the third party may at the trial contest the defendant's liability to the plaintiff.	*Rights of Third Party* (3) If the defendant alleges, in a defendant's claim, that a third party is liable to the defendant for all or part of the plaintiff's claim in the action, the third party may at the trial contest the defendant's liability to the plaintiff
Application of Rules to Defendant's Claim 10.05 (1) These rules apply, with necessary modifications, to a defendant's claim as if it were a plaintiff's claim, and to a defence to a defendant's claim as if it were a defence to a plaintiff's claim.	*Application of Rules to Defendant's Claim* 10.05 (1) These rules apply, with necessary modifications, to a defendant's claim as if it were a plaintiff's claim, and to a defence to a defendant's claim as if it were a defence to a plaintiff's claim.
Exception (2) However, when a person against whom a defendant's claim is made is noted in default, judgment against that person may be obtained only in accordance with rule 11.03.	*Exception* (2) However, when a person against whom a defendant's claim is made is noted in default, judgment against that person may be obtained only in accordance with rule 11.03.

EXISTING RULES	PROPOSED RULES
RULE 11 DEFAULT PROCEEDINGS	RULE 11 DEFAULT PROCEEDINGS
Noting Defendant in Default	*Noting Defendant in Default*
11.01 (1) If a defendant fails to file a defence with the clerk within the prescribed time, the clerk may, when proof is filed that the claim was served within the territorial division, note the defendant in default.	11.01 (1) Where a defendant fails to file a defence within the prescribed time, **the registrar** may note the defendant in default, **upon the plaintiff filing proof that** the claim was served (Form 8A).
Service Outside Territorial Division	*Service Outside Territorial Division*
(2) If all the defendants have been served outside the court's territorial division, the clerk shall not note any defendant in default until it is proved by an affidavit submitted to the clerk, or by evidence presented before the judge, that the action was properly brought in that territorial division.	(2) If all the defendants have been served outside the court's territorial division, the **registrar** shall not note any defendant in default until it is proved **to the registrar** by an **original affidavit (Form 11A)** or by evidence presented before **a** judge, that the action was properly brought in that territorial division.
Default Judgment, Plaintiff's Claim	*Default Judgment, Plaintiff's Claim*
11.02 (1) If a defendant has been noted in default, the clerk may enter judgment in respect of a claim against the defendant for a debt or liquidated demand in money, including interest if claimed.	11.02 (1) If a defendant has been noted in default **for all or part of a claim**, the **registrar shall sign** judgment **in respect of that part of the claim that is for a debt or liquidated demand and for which no defence has been filed**, including interest if claimed. **(Form 11B)**
Partial Defence	**(2)** Judgment under this rule does not affect the plaintiff's right to proceed on the remainder of the claim or against any other defendant for all or part of the claim.
(2) If a defence is filed in respect of part only of a claim to which subrule (1) applies, the clerk may note the party against whom the claim was made in default and enter default judgment in respect of the part for which no defence was filed.	*Notice of Default Judgment*
(3) Entry of judgment under this rule does not affect the plaintiff's right to proceed on the remainder of the claim or against any other defendant for all or part of the claim.	(3) A notice of default judgment (Form 11 C) shall be served in accordance with subrule 8.01 (4).
Notice of Default Judgment	*Default Judgment, Defendant's Claim*
(4) A notice of default judgment (Form 11A) shall be served in accordance with subrule 8.01 (4).	11.03 If a party against whom a defendant's claim is made has been noted in default, judgment may be obtained against the party **only on motion**.
Default Judgment, Defendant's Claim	**Obtaining Judgment when Defendant Noted in Default**
11.03 If a party against whom a defendant's claim is made has been noted in default, judgment may be obtained against the party only at trial or on motion.	11.04 (1) If a defendant has been noted in default **for all or a part of any claim, other than one referred to in sub-rules 11.02 and 11.03**, the plaintiff **is not required** to proceed to trial **but may obtain default judgment by proving the amount of the claim either by filing a motion with a supporting affidavit without serving notice to the other party, or at an assessment hearing requested by the plaintiff.**
Trial when Defendant Noted in Default	**(2) If a plaintiff's affidavit is found to be inadequate or unsatisfactory, the Judge may order a further and better affidavit or an assessment hearing.**
11.04 (1) If a defendant has been noted in default, the plaintiff shall proceed to trial in respect of any claim other than one referred to in subrule 11.02 (1), and the clerk shall, after noting the defendant in default, fix a trial date and send a notice of trial (Form 16A) to the plaintiff and any defendant who has filed a defence.	**(3) The registrar shall serve on all parties a copy of any order or judgment made pursuant to 11.04(1) (Form 11D).**
(2) At the trial, the plaintiff is not required to prove liability against a defendant noted in default, but is required to prove the amount of the claim.	*Consequences of Noting in Default*
Consequences of Noting in Default	11.05 (1) A defendant who has been noted in default shall not file a defence or take any other step in the proceeding without leave of the court or the plaintiff's consent, **except to make a motion under subrule 11.06 (1)**
11.05 (1) A defendant who has been noted in default shall not file a defence or take any other step in the proceeding, except bringing a motion under subrule 11.06 (1), without leave of the court or the plaintiff's consent.	(2) Any step in **a** proceeding may be taken without the consent of a defendant who has been noted in default; **and the** defendant is not entitled to notice of any step in the proceeding and need not be served with any other document, **unless otherwise provided for in these Rules**.
(2) Any step in the proceeding may be taken without the consent of a defendant who has been noted in default; the defendant is not entitled to notice of any step in the proceeding and need not be served with any other document.	**Setting Aside Default**
Subrule (2) prevails over every other provision of these rules except rule 12.01 (amendment of claim or defence).	11.06 (1) On the motion of a party in default, the court may set aside the noting of default or **any consequence** of default **before trial** against the party, on such terms as are just, **if the moving party has presented evidence that it has:**
Setting Aside Noting of Default or Entry of Default Judgment	**(a) a meritorious defence,**
11.06 (1) On the motion of a party in default, the court may set aside the noting of default or entry of default judgment against the party on such terms as are just.	**(b) a reasonable explanation for the default and,**
(2) If the consent of the parties is filed, the clerk may set aside the noting of default or the entry of a default judgment.	**(c) filed the motion to set aside as soon as was practically possible in all of the circumstances.**
	Jurisdiction of registrar
	(2) The registrar shall make an order granting the relief sought on a motion for an order on consent, if,
	(a) the consent of all parties is filed (including the consent of any party to be added, deleted or substituted);

EXISTING RULES	PROPOSED RULES
	(b) the consent states that no party affected by the Order is under disability; and **(c) the order sought is to,** **(i) amend a claim or defence,** **(ii) add, delete or substitute a party,** **(iii) set aside the noting of a party in default,** **(iv) set aside a consequence of default,** **(v) set aside a default judgment,** **(vi) restore a matter to the list; or** **(vii) dismiss a proceeding, with or without costs.** RULE 12 **DISMISSAL OF A PROCEEDING BY REGISTRAR** ***Undefended Actions*** **12.01(1) The registrar shall make an order dismissing a claim as abandoned (Form 12A) if the following conditions are satisfied, unless the court orders otherwise:** **(a) 45 days written notice that the claim will be dismissed as abandoned has been given by the registrar (Form 12B), and** **(b) More than 180 days have passed since the date the claim was issued or renewed, and** **(i) no defence has been filed; or** **(ii) no request has been made to note the defendant in default; or** **(iii) the proceeding has not been disposed of by order; or** **(iv) the proceeding has not been set down for trial.** ***Defended Actions*** **12.01(2) The registrar shall make an order dismissing a claim as abandoned where a defence has been filed, if the following conditions are satisfied, unless the court orders otherwise:** **(a) 45 days written notice that the claim will be dismissed as abandoned has been given by the registrar, and** **(b) More than 150 days have passed since the date the first defence was filed, and** **(i) any settlement conference have not been completed; or** **(ii) the proceeding has not been disposed of by minutes of settlement filed; or** **(iii) the proceeding has not been set down for trial.** ***Expiry of Two Years*** **12.01(3) The registrar shall make an order dismissing a claim as abandoned where more than 2 years have passed since the claim was issued if the following conditions are satisfied, unless the court orders otherwise:** **(a) 45 days written notice that the claim will be dismissed as abandoned has been given by the registrar, and** **(b)(i) no defence has been filed ;or** **(ii) the proceeding has not been disposed of by order; or** **(iii) the proceeding has not been set down for trial.** ***Service of Order*** **12.02 The registrar shall serve a copy of any order made under this Rule on all parties to the proceeding.** ***Exception*** **12.03 The registrar shall not dismiss the claim as abandoned under these rules where;** **(a) the defendant has filed an admission of liability and proposal for payment as provided for in Rule 9, or** **(b) written minutes of settlement have been filed and fulfilled.** ***Transition*** **12.04 Subrules 12.01 to 12.03 apply to all claims filed on or after _____2004, and any claim filed before that date shall be subject to a registrar's order dismissing it as abandoned if the conditions described in sub rule 12.01(3) are satisfied.**

EXISTING RULES	PROPOSED RULES
RULE 12 AMENDMENT	RULE 13 AMENDMENT
Right to Amend 12.01 (1) A plaintiff's or defendant's claim and a defence to a plaintiff's or defendant's claim may be amended by filing with the clerk a copy that is marked "Amended", in which any additions are underlined and any other changes are identified. *Service* (2) The amended document shall be served by the party making the amendment on all parties, including any parties in default, in accordance with subrule 8.01 (10). *Time* (3) Filing and service of the amended document shall take place at least 30 days before the trial, unless the court, on motion, allows a shorter notice period. *Service on Added Party* (4) A person added as a party shall be served with the claim as amended, except that if the person is added as a party at trial, the court may dispense with service of the claim. *Striking Out or Amending Claim or Defence* 12.02 (1) The court may strike out or amend a claim or defence or anything in a claim or defence on the ground that it, (a) discloses no reasonable cause of action or defence, as the case may be; (b) is scandalous, frivolous or vexatious; (c) may prejudice, embarrass or delay the fair trial of the action; or (d) is otherwise an abuse of the court's process. (2) The court may order the action to be stayed or dismissed or judgment to be entered accordingly, or may impose such terms as are just.	*Right to Amend* 13.01 (1) A claim and a defence may be amended by filing with the **registrar** a copy that is marked " Amended", in which any additions are underlined and any other changes are identified. **(Forms 7B, 9F, 10C, 10D)** *Service* (2) The amended document shall be served by the party making the amendment on all parties, including any parties in default, in accordance with subrule 8.01 (10). *Time* (3) Filing and service of the amended document shall take place at least 30 days before **the original scheduled** trial **date,** unless the court, on motion, allows a shorter notice period. *Service on Added Party* (4) A person added as a party shall be served with the claim as amended, except that if the person is added as a party at trial, the court may dispense with service of the claim. **(5) A party served with an amended pleading is not required to amend its pleading.** *Striking Out or Amending Claim or Defence* 13.02 (1) The court may strike out or amend a claim or defence or anything in a claim or defence on the ground that it, (a) discloses no reasonable cause of action or defence, as the case may be; (b) is **irrelevant;** (c) may prejudice or delay the fair trial of the action; or (d) is otherwise an abuse of the court's process. (2) The court may order **that a proceeding** be stayed or dismissed **and** judgment be entered accordingly, or may impose such terms as are just.

EXISTING RULES	PROPOSED RULES
RULE 13 PRE-TRIAL CONFERENCES *Request For Pre-Trial Conference* 13.01 (1) A party may request a pre-trial conference by filing a request for pre-trial conference (Form 13A) with the clerk. (2) The court may, before or at the trial, in response to a request for pre-trial conference or on the court's own initiative, direct that a pre-trial conference be held before a judge or another person designated by the court. (3) The clerk shall fix a time and place for the pre-trial conference and serve a notice of pre-trial conference on the partics. *Failure to Attend* (4) The court may impose appropriate sanctions, by way of costs or otherwise, for the failure of a party who has received a notice of pre-trial conference to attend the pre-trial conference. *Inadequate Preparation* (5) If a person who attends a pre-trial conference is, in the opinion of the judge or designated person conducting the conference, so inadequately prepared as to frustrate the purposes of the conference, the court may award costs against that person. *Limit on Costs* (6) Costs awarded under subrule (4) or (5) shall not exceed $50 unless there are special circumstances. *Notice of Trial* (7) At or after a pre-trial conference, the clerk shall provide the parties with a notice stating that the parties must request a trial date if the action is not disposed of within 30 days after the pre-trial conference, and pay the fee required for setting the action down for trial. *Purposes of Pre-Trial Conference* 13.02 (1) The purposes of a pre-trial conference are, (a) to resolve or narrow the issues in the action; (b) to expedite the disposition of the action; (c) to facilitate settlement of the action; (d) to assist the parties in effective preparation for trial; and (e) to provide full disclosure between the parties of the relevant facts and evidence. (2) At the pre-trial conference, the parties or their representatives shall openly and frankly discuss the issues involved in the action. *Disclosure Restricted* (3) Except as otherwise provided or with the consent of the parties, the matters discussed at the pre-trial conference shall not be disclosed.	RULE 14 **SETTLEMENT CONFERENCES** **Compulsory Settlement Conference** 14.01 (1) All defended actions shall have a **mandatory settlement conference.** (2) The **registrar** shall fix a time and place for the settlement conference and serve a notice of **settlement** conference **(Form 14A)** on the parties. **(3) The settlement conference shall be held within 90 days of the first Defence being filed.** **(4) Sub rule (1) does not apply where a defendant has filed an admission of full liability and a proposal for payment pursuant to rule 9.03(1).** **Attendance** **14.02 (1) A party and the lawyer or agent, if any, shall, unless the court orders otherwise, participate in the settlement conference** **(a) by personal attendance; or** **(b) by telephone or videoconference if personal attendance would require undue amounts of travel time or expense.** **(2) A person who requires another person's approval before agreeing to a settlement shall, before the settlement conference, arrange to have ready access to that other person throughout the conference, whether it takes place during or after business hours.** *Failure to Attend* (3) The court may impose appropriate sanctions, by way of costs or otherwise, for the failure of a party who has received a notice of **settlement** conference to attend the conference. *Inadequate Preparation* **(4) If a person who attends a settlement conference is, in the opinion of the judge or designated person conducting the conference, so inadequately prepared as to frustrate the purposes of the conference,** or has not filed the material under subrule 14.03 (2), **the court may award costs against that person.** *Purposes of the Settlement Conference* 14.03 (1) The purposes of a settlement conference are, (a) to resolve or narrow the issues in the action; (b) to expedite the disposition of the action; (c) to **encourage** settlement of the action; (d) to **help** the parties in effective preparation for trial; and (e) to provide full disclosure between the parties of the relevant facts and evidence. **Disclosure** **(2) If a party does not file a Summary of Facts and Issues (Form 14B), the party must file** **(a) a copy of any documents to be relied on, which were not attached to the claim or defence,** **(b) a copy of any expert report, and** **(c) a list (Form 14C) of potential witnesses or persons with knowledge of matters in dispute.** **(3) The Summary of Facts and Issues, if any, all documents and other relevant evidence must be sent to the Court and to the other parties at least 14 days before the date of the settlement conference.** (4) At the **settlement** conference, the parties or their representatives shall openly and frankly discuss the issues involved in the action. *Disclosure Restricted* 14.04(1) Except as otherwise provided or with the consent of the parties **(Form 14 D),** the matters discussed at the **settlement** conference shall not be disclosed **until after judgment has been rendered.**

EXISTING RULES	PROPOSED RULES
Recommendations to Parties 13.03 (1) The judge or designated person conducting the pre-trial conference may make recommendations to the parties on any matter relating to the conduct of the action, in order to fulfil the purposes of a pre-trial conference, including recommendations as to, (a) the formulation and simplification of issues in the action; (b) the elimination of claims or defences that appear to be unsupported; and (c) the admission of facts or documents without further proof. *Orders at Pre-Trial Conference* (2) A judge conducting a pre-trial conference may make any order relating to the conduct of the action that the court could make. (3) Without limiting the generality of subrule (2), the judge may make, (a) an order for the joinder of parties; (b) an order amending or striking out a claim or defence under rule 12; (c) an order referring a matter to a referee under rule 21; and (d) an order for costs under subrule 13.01 (4) or (5) (3)If a designated person conducts the pre-trial conference, a judge may, on that person's recommendation, make any order that could be made under subrule (2). *Memorandum* (5) At the end of the pre-trial conference, the judge or designated person may prepare a memorandum summarizing, (a) the issues remaining in dispute; (b) the matters agreed on by the parties; (c) any evidentiary matters that the judge or designated person considers relevant; and (d) information relating to the scheduling of the remaining steps in the proceeding. (6) The memorandum shall be filed with the clerk, and the clerk shall give the trial judge a copy. *Judge Not To Preside At Trial* 13.04 A judge who conducts a pre-trial conference in an action shall not preside at the trial of the action unless the parties consent in writing.	*Recommendations to Parties* **14.05 (1)** The judge or designated person conducting the settlement conference may make recommendations to the parties on any matter relating to the conduct of the action, in order to fulfil the purposes of a settlement conference, including recommendations as to, (a) the **clarification** and simplification of issues in the action; (b) the elimination of claims or defences that appear to be unsupported; and (c) the admission of facts or documents without further proof. *Orders at Settlement Conference* (2) A judge conducting a **settlement** conference may make any order relating to the conduct of the action that the court could make. (3) Without limiting the generality of subrule (2) or of sub rules 14.02(3) and (4), the judge may make, **(a) an order adding or deleting parties;** **(b) an order consolidating actions;** **(c) an order staying the claim or defendant's claim;** **(d) an order striking a defence or dismissing the claim pursuant to rule 12.02;** **(e) an order to amend a claim or defence under rule 12;** (f) an order referring a matter under rule 22; (g) an order for costs under subrule **14.02 (2) or (4);** **(h) an order for a default judgment pursuant to rule 11.02(1), except in the case of a first non-attendance; and** **(i) an order as to territorial jurisdiction or place of trial.** **Recommendations Pursuant to Rule 21** (4)If a designated person conducts the settlement conference, a judge may, **on that person's recommendation,** make any order that could be made under subrule (2). **(5) A recommendation under subrule (2) is not binding until a judge signs an order.** **(6) An order (Form 14 E) under subrule (5) shall be sent to the parties by the registrar within 10 days of the date of the judge's order.** *Memorandum* (7) At the end of the **settlement** conference, the judge or designated person **shall** prepare a memorandum **(Form 14 F)** (a) summarizing, (i) the issues remaining in dispute; (ii) the matters agreed on by the parties; (iii) any evidentiary matters that the judge or designated person considers relevant; (iv) information relating to the scheduling of the remaining steps in the proceeding , **and** **(b) confirming orders made during the settlement conference.** (8) The memorandum shall be filed in the action with the **registrar**, and the **registrar** shall give the trial judge a copy. **Notice of Trial** (9) At or after a **settlement** conference**, the registrar** shall provide the parties with a notice **(Form 14 G)** stating that the parties must request a trial if the action is not settled or disposed of. *Judge Not To Preside At Trial* A judge who conducts a **settlement** conference in an action shall not preside at the trial of the action.

EXISTING RULES	PROPOSED RULES
RULE 14 OFFER TO SETTLE	RULE **15** OFFER TO SETTLE
14.01 A party may serve on any other party an offer to settle a claim on the terms specified in the offer.	15.01 A party may serve on any other party a **written** offer to settle a claim on terms specified in the offer. **(Form 15A)**
Time For Making Offer	*Time For Making Offer*
14.02 An offer to settle may be made at any time, but if it is made less than seven days before the hearing commences, the costs consequences referred to in rule 14.07 do not apply.	15.02 A **written** offer to settle may be made at any time, but **all parties must be served with the written offer to settle at least seven days before the trial commences if the costs consequences referred to in rule 20 are to apply.**
Withdrawal	*Withdrawal*
14.03 (1) An offer to settle may be withdrawn at any time before it is accepted, by serving notice of its withdrawal on the party to whom it was made.	15.03 (1) A **written** offer to settle may be withdrawn at any time before it is accepted, by serving **a written** notice of its withdrawal on the party to whom it was made. **If a written offer to settle specifies a date past which it is no longer available for acceptance then it shall be deemed to have been withdrawn as of the day after the last date for acceptance.**
Expiry When Court Disposes of Claim	***Expiry***
(2) An offer may not be accepted after the court disposes of the claim in respect of which the offer is made.	(2) A **written offer to settle** may be accepted **at any time prior to the commencement of trial, unless an earlier date is specified in the offer after which the offer is no longer available for acceptance.**
No Disclosure of Offer to Trial Judge	*No Disclosure to Trial Judge*
14.04 If an offer to settle is not accepted, no communication about it shall be made to the trial judge until all questions of liability and the relief to be granted, other than costs, have been determined.	15.04 If a **written** offer to settle is not accepted, no communication about it **or any negotiations concerning settlement** shall be made to the trial judge until all questions of liability and the relief to be granted, other than costs, have been determined.
Acceptance	*Acceptance*
14.05 (1) An offer to settle may be accepted by serving an acceptance of the offer on the party who made it, at any time before it is withdrawn or the court disposes of the claim in respect of which it is made.	15.05 (1) **A written** offer to settle may be accepted by serving a **written** acceptance of the offer on the party who made it, at any time before it is withdrawn or the court disposes of the claim in respect of which it is made.
Payment Into Court As Condition	*Payment Into Court As Condition*
(2) An offer by a plaintiff to settle a claim in return for the payment of money by a defendant may include a term that the defendant pay the money into court; in that case, the defendant may accept the offer only by paying the money into court and notifying the plaintiff of the payment.	(2) **A written** offer to settle by a plaintiff to settle a claim in return for the payment of money by a defendant may include a term that the defendant pay the money into court; in that case, the defendant may accept the offer only by paying the money into court and notifying the plaintiff of the payment.
(3) If a defendant offers to pay money to a plaintiff in settlement of a claim, the plaintiff may accept the offer with the condition that the defendant pay the money into court; if the offer is so accepted and the defendant fails to pay the money into court, the plaintiff may proceed as provided in rule 14.06.	(3) If a defendant offers to pay money to a plaintiff in settlement of a claim, the plaintiff may accept the offer **in writing** with the condition that the defendant pay the money into court; if the offer is so accepted and the defendant fails to pay the money into court, the plaintiff may proceed as provided in rule 15.06.
Costs	***Disbursements***
(4) If an accepted offer to settle does not deal with costs, the plaintiff is entitled,	(4) If an accepted offer to settle does not deal with costs, the plaintiff is entitled,
(a) in the case of an offer made by the defendant, to the plaintiff's disbursements assessed to the date the plaintiff was served with the offer;	(a) in the case of an offer made by the defendant, to the plaintiff's disbursements assessed to the date the plaintiff was served with the offer;
(b) in the case of an offer made by the plaintiff, to the plaintiff's disbursements assessed to the date that the notice of acceptance was served.	(b) in the case of an offer made by the plaintiff, to the plaintiff's disbursements assessed to the date that the notice of acceptance was served.
Failure to Comply With Accepted Offer	*Failure to Comply With Accepted Offer*
14.06 If a party to an accepted offer to settle fails to comply with the terms of the offer, the other party may,	15.06 If a party to an accepted offer to settle fails to comply with the terms of the offer, the other party may,
(a) make a motion to the court for judgment in the terms of the accepted offer; or	(a) **file** a motion for judgment in the terms of the accepted offer; or
(b) continue the proceeding as if there had been no offer to settle.	(b) continue the proceeding as if there had been no offer to settle.
Costs Consequences of Failure to Accept	
14.07 (1) When a plaintiff makes an offer to settle that is not accepted by the defendant, the court may award the plaintiff an amount not exceeding twice the costs of the action, if the following conditions are met:	
1. The plaintiff obtains a judgment as favourable as or more favourable than the terms of the offer.	
2. The offer was made at least seven days before the trial.	
3. The offer was not withdrawn and did not expire before the trial.	
(2) When a defendant makes an offer to settle that is not accepted by the plaintiff, the court may award the defendant an amount not exceeding twice the costs awardable to a successful party, from the date the offer was served, if the following conditions are met:	

EXISTING RULES	PROPOSED RULES
1. The plaintiff obtains a judgment as favourable as or less favourable than the terms of the offer. 2. The offer was made at least seven days before the trial. 3. The offer was not withdrawn and did not expire before the trial. (3)If an amount is awarded under subrule (1) or (2) to an unrepresented party, the court may also award the party an amount not exceeding $300 as compensation for inconvenience and expense.	
RULE 15 MOTIONS *Notice of Motion* 15.01 (1) Unless the court orders otherwise, a motion shall be commenced by the filing of a notice of motion (Form 15A) and an affidavit (Form 15B). (2) A copy of the notice of motion and the affidavit shall be served at least seven days before the hearing date on every party who has filed a claim or defence. *Costs* 15.02 (1) No costs are recoverable in respect of a motion, except that if the court is satisfied that a motion should not have been brought or opposed, or that the motion was necessary because of a party's default, the court may fix the costs of the motion and order that they be paid immediately. (2) The costs of a motion fixed by the court under subrule (1) shall not exceed $50 unless there are special circumstances.	RULE **16** MOTIONS *Notice of Motion* 16.01 Unless the court orders otherwise, a motion shall be commenced by filing a notice of motion (Form 16A) and a supporting original affidavit (Form 16B). **Service** **16.02(1)** A copy of the notice of motion and the affidavit shall be served at least 7 days before the hearing date on every party who has filed a claim or defence **unless the nature of the motion and the circumstances involved with such service render service impracticable or unnecessary. In that case the court may, without notice, make such order as it feels is just.** **(2) The notice of motion and supporting affidavit and an affidavit proving service thereof must all be filed no later than 3 days before the date scheduled for the hearing of the motion.** **(3) Any responding or supplementary affidavit shall be served and filed with proof of service, no later than 2 days before the date scheduled for the hearing of the motion.** (4) Any motion made in a proceeding after a judgment has been signed must be served on all parties, even if a party has previously been noted in default. **Hearing** **16.03(1) A motion shall be heard in person but may, in the discretion of the judge, be heard by telephone, videoconference, electronic medium, or in such other manner as the judge determines is fair and reasonable.** **(2) Any order made without notice that affects a person or a party shall, within 5 days of being signed, be served by the party obtaining the order on all persons so effected together with a copy of the notice of motion and affidavit used to obtain the order.** **Further Proceedings** **16.04(1) A person affected by an order obtained without notice may file a motion to set aside or vary the said order within 30 days of being served with a copy of the signed order.** **(2) Any party may file a motion to prohibit another party from making any further motions in a proceeding until that party obtains the leave of the court. The moving party must satisfy the court that the other party's motions have unfairly attempted to delay or unreasonably add to the costs of a proceeding or otherwise are an abuse of the court's process.** **Adjournment** **16.05 A motion shall not be adjourned at the request of a party in advance of the scheduled hearing date unless a written consent to the adjournment from all parties to the motion has been filed with the court at the time of the request for the adjournment.** **Withdrawal of Motion** **16.06 A motion may only be withdrawn or discontinued on written consent or with leave of the court after service on the respondent.**

EXISTING RULES	PROPOSED RULES
RULE 16 NOTICE OF TRIAL 16.01 (1) If a defence has been filed, the clerk shall fix a date for trial and serve a notice of trial (Form 16A) on each party who has filed a claim or defence. *Manner of Service* (1.1) The notice of trial shall be served by mail or fax, or by e-mail in accordance with rule 8.09 if the person on whom it is served is entitled to use electronic documents in the (2) If a pre-trial conference is to be conducted under rule 13, subrule 13.01 (7) applies instead of subrule (1) of this rule.	RULE **17** NOTICE OF TRIAL **Service** **17.01 If after a settlement conference the registrar is requested by a party to fix a date for trial and receives the required fee, a notice of trial (Form 16A) shall be served by the registrar by mail or fax on each party who has filed a claim or defence.** 17.02 A notice of trial may also be served by e-mail in accordance with R. 8.09 if the person on whom it is served is entitled to use electronic documents in the proceeding under R 1.06. Service by e-mail is not effective after **January 1, 2006** unless Rules 8.09 and 1.06 permit it. **Summary of Facts and Issues** **17.03 Each party shall serve on all other parties and file with the court at least 30 days before the trial date in the first Notice of Trial, a completed Summary of Facts and Issues (Form 14B), unless such form was already completed and filed at a settlement conference.** **Withdrawal of Claim** **17.04 A claim may not be withdrawn or discontinued after a settlement conference without written consent or leave of the court.**

EXISTING RULES	PROPOSED RULES
RULE 17 TRIAL	**RULE 18** TRIAL
Failure to Attend	*Failure to Attend*
17.01 (1) If an action is called for trial and all the parties fail to attend, the trial judge may strike the action off the trial list.	18.01(1) When an action is called for trial and **one or more of the parties** fails to attend, the trial judge may,
(2) If an action is called for trial and a party fails to attend, the trial judge may,	**(a) strike the action off the trial list;**
(a) proceed with the trial in the party's absence;	(b) proceed with the trial in the party's absence;
(b) if the plaintiff attends and the defendant fails to do so, strike out the defence and dismiss the defendant's claim, if any, and allow the plaintiff to prove the plaintiff's claim, subject to subrule (3);	(c) if the plaintiff attends and the defendant fails to do so, strike out the defence, allow the plaintiff to prove the plaintiff's claim **in an assessment hearing, subject to any issues of jurisdiction dealt with in Rule 14 and dismiss the defendant's claim, if any;**
(c) if the defendant attends and the plaintiff fails to do so, dismiss the action and allow the defendant to prove the defendant's claim, if any; or	(d) if the defendant attends and the plaintiff fails to do so, dismiss the action and allow the defendant to prove the defendant's claim **in an assessment hearing.**
(d) make such other order as is just.	(e) make such other order as is just.
(3) In the case described in clause (2) (b), if an issue as to the proper place of trial under subrule 6.01 (1) is raised in the defence, the trial judge shall consider it and make a finding.	*Setting Aside or Variation of Judgment*
Setting Aside or Variation of Judgment	(2) The court may set aside or vary, on such terms as are just, a judgment obtained against a party who failed to attend at a trial.
(4) The court may set aside or vary, on such terms as are just, a judgment obtained against a party who failed to attend at the trial.	**(3)Any motion to set aside or vary such a judgment must be made by the party who failed to attend at a trial within 30 days of that party becoming aware of such judgment unless there are special circumstances that convince the court to extend that 30 day period.**
Adjournment	*Adjournment*
17.02 The court may postpone or adjourn a trial on such terms as are just, including the payment by one party to another of an amount as compensation for inconvenience and expense.	18.02 **(1)** The court may postpone or adjourn a trial on such terms as are just, including the payment by one party to another of an amount as compensation for inconvenience and expense.
Inspection	**(2)** After **two adjournments of a trial, any request to further adjourn a trial must be made by motion on notice to all parties who were served with the Notice of Trial.**
17.03 The trial judge may, in the presence of the parties or their representatives, inspect any real or personal property concerning which a question arises in the action.	*Inspection*
Motion for New Trial	18.03 The trial judge may, in the presence of the parties or their representatives, inspect any real or personal property concerning which a question arises in the action.
17.04 (1) Within 30 days after the trial, a party may make a motion to the court for a new trial.	*Motion for a New Trial*
Order for New Trial or Entry of New Judgment	18.04 (1) **(a) A motion for a new trial shall be filed within 30 days after a final order in a proceeding and if the final order can be appealed,**
(2) On the hearing of the motion, the court may,	**(b) There must also be filed proof that the official transcript of the reasons for judgment have been ordered (Form 18 B).**
(a) if the party demonstrates that a condition referred to in subrule (3) is satisfied,	**(c) At least 3 days before the hearing of the motion the moving party must serve the official transcript on all parties who were served with the original Notice of Trial, and file it.**
(i) grant a new trial, or	Order for New Trial **or Signing** of New Judgment
(ii) pronounce the judgment that ought to have been given at trial and order judgment to be entered accordingly; or	(2) On the hearing of a motion **for a new trial, the motion shall be dismissed unless** the **moving** party **proves** that:
(b) dismiss the motion.	(a) there was a purely arithmetical error in the determination of the amount of damages awarded or
(3) The conditions referred to in clause (2) (a) are:	(b) there is now available relevant evidence that could not reasonably have been discovered and presented by the party at the time of the original trial,
1. There was a purely arithmetical error in the determination of the amount of damages.	**in which case the court may then:**
2. The party was, for a valid reason, unable to attend the first trial.	(i) grant a new trial, or
3. There is relevant evidence that could not reasonably have been expected to be available to the party at the time of the first trial.	(ii) pronounce the judgment that ought to have been given at trial and order judgment to be signed accordingly.

EXISTING RULES	PROPOSED RULES
RULE 18 EVIDENCE AT TRIAL *Affidavit* 18.01 At the trial of an undefended action, the plaintiff's case may be proved by affidavit, unless the trial judge orders otherwise. *Written Statements and Documents* 18.02 (1) A written statement or document described in subrule (2) that has been served on all parties at least 14 days before the trial date shall be received in evidence, unless the trial judge orders otherwise. (2) Subrule (1) applies to the following written statements and documents: 1. The signed written statement of any witness, including the written report of an expert, to the extent that the statement relates to facts and opinions to which the witness would be permitted to testify in person. 2. Any other document, including but not limited to a hospital record or medical report made in the course of care and treatment, a financial record, a bill, documentary evidence of loss of income or property damage, and a repair estimate. *Name, Telephone Number and Address of Witness or Author* (3) A party who serves on another party a written statement or document described in subrule (2) shall append to or include in the statement or document the name, telephone number and address for service of the witness or author. (4) A party who has been served with a written statement or document described in subrule (2) and wishes to cross-examine the witness or author may summon him or her as a witness under subrule 18.03 (1). *Where Witness or Author is Summoned* (5) A party who serves a summons to witness on a witness or author referred to in subrule (3) shall, at the time the summons is served, notify all other parties of the summons. *Summons to Witness* 18.03 (1) A party who requires the attendance of a person in Ontario as a witness at a trial may serve the person with a summons to witness (Form 18A) requiring him or her to attend the trial at the time and place stated in the summons. (2) The summons may also require the witness to produce at the trial the documents or other things in his or her possession, control or power relating to the matters in question in the action that are specified in the summons. (3) A summons to witness shall be served in accordance with subrule 8.01 (5) and, at the same time, attendance money shall be paid or tendered to the witness in accordance with the tariff. (4) Service of a summons to witness and the payment or tender of attendance money may be proved by affidavit. (5) A summons to witness continues to have effect until the attendance of the witness is no longer required. *Failure to Attend or Remain in Attendance* (6) If a witness whose evidence is material to the conduct of an action fails to attend at the trial or to remain in attendance in accordance with the requirements of a summons to witness served on him or her, the trial judge may, by warrant (Form 18B) directed to all police officers in Ontario, cause the witness to be apprehended anywhere within Ontario and promptly brought before the court.	RULE 19 EVIDENCE AT TRIAL **Production of Documents and Statements** 19.01 **(1)** A document, written statement **or photograph** that has been served **at least 30 days before the trial date on all parties served with the Notice of Trial** shall be received in evidence, unless the trial judge orders otherwise. (2) Subrule (1) applies to the following documents and written statements: (a) Any document, including but not limited to a hospital record or medical report made in the course of care and treatment, a financial record, a bill, **a receipt,** documentary evidence of loss of income or property damage, and a repair estimate. (b) The signed written statement of any witness, including the written report of an expert, to the extent that the statement relates to facts and opinions to which the witness would be permitted to testify in person. *Name, Telephone Number and Address of Witness or Author* (3) A party who serves on another party a written statement or document as described in subrule (2), shall append to or include in the statement the name, telephone number and address for service of the witness or author. **Expert Qualifications** **(4) If a witness or author will be giving expert evidence a written summary of the witness's qualifications shall be served.** *Summons to Witness* 19.02**(1) (a)** A party who has been served with a written statement or document described in subrule 19.01(2) and wishes to cross-examine the witness or author may summon him or her as a witness under subrules (2) to (6) **and must serve all other parties with a copy of the said summons.** **(b) Failure to serve all other parties with a copy of the summons shall entitle any party not so served to seek an adjournment of the trial and their costs of that adjournment**. (2) A party who requires the attendance of a person in Ontario as a witness at a trial may serve the person with a summons to witness (Form 19A) requiring him or her to attend the trial at the time and place stated in the summons. (3) The summons may also require the witness to produce at the trial the documents or other things in his or her possession, control or power relating to the matters in question in the action that are specified in the summons. (4) A summons to witness shall be served not less than 10 days before trial and in accordance with Rule 8.01(5). (5) **Proof of** service of a summons to witness and the payment or tender of attendance money **shall be made in accordance with Rule 8.06.** (6) A summons to witness continues to have effect until the attendance of the witness is no longer required. **(7) Except for bilingual proceedings under s. 126 of the *Courts of Justice Act*, where a summons to witness is served on a witness requiring an interpreter the party who serves the summons shall arrange for a qualified interpreter to be at the trial. Failure to have a qualified interpreter at a trial shall entitle any other party at the trial to ask for an adjournment and their costs of the adjournment**. *Failure to Attend or Remain in Attendance* (8) If a witness whose evidence is material to the conduct of an action fails to attend at the trial or to remain in attendance in accordance with the requirements of a summons to witness served on him or her, the trial judge may, by warrant (Form 18B) directed to all police officers in Ontario, cause the witness to be apprehended anywhere within Ontario and promptly brought before the court.

EXISTING RULES	PROPOSED RULES
(7) On being apprehended, the witness may be detainod in custody until his or her presence is no longer required or released on such terms as are just, and may be ordered to pay the costs arising out of the failure to attend or remain in attendance.	(9) On being apprehended, the witness may be detained in custody until his or her presence is no longer required or released on such terms as are just, and may be ordered to pay the costs arising out of the failure to attend or remain in attendance.
Abuse of Power to Summon Witness	*Abuse of Power to Summon Witness*
(8) If satisfied that a party has abused the power to summon a witness under this rule, the court may order that the party pay directly to the witness an amount as compensation for inconvenience and expense.	(10) If satisfied that a party has abused the power to summon a witness under this rule, the court may order that the party pay directly to the witness an amount as compensation for inconvenience and expense.
RULE 19 COSTS	**RULE 20** COSTS
Disbursements	*Disbursements*
19.01 (1) A successful party is entitled to have the party's disbursements, including any costs of effecting service, paid by the unsuccessful party, unless the court orders otherwise.	20.01 (1) A successful party is entitled to have the party's **reasonable** disbursements, including any costs of effecting service**, expenses for travel, accommodation, photocopying and expert(s) reports** paid by the unsuccessful party, unless the court orders otherwise.
(2) The clerk shall assess the disbursements in accordance with the regulations made under the Administration of Justice Act and in accordance with subrule (3); the assessment is subject to review by the court.	(2) **The registrar** shall assess the disbursements in accordance with the regulations made under the *Administration of Justice Act* and in accordance with subrule (3); the assessment is subject to review by the court.
(3) The amount of disbursements assessed for effecting service shall not exceed $20 for each person served.	(3) The amount of disbursements assessed for effecting service shall not exceed $20 for each person served **unless in the discretion of the court circumstances warrant assessment of a higher amount.**
Limit	*Limit*
19.02 Any power under this rule to award costs are subject to section 29 of the Courts of Justice Act.	**20.02 An award of costs in the court, other than disbursements, shall not exceed 15% of the amount claimed or the value of the property sought to be recovered, unless the court considers it necessary in the interests of justice to penalize a party, counsel, agent or other representative for unreasonable behaviour in the proceeding.**
Preparation and Filing	*Preparation and Filing*
19.03 The court may allow a successful party an amount not exceeding $50 for preparation and filing of pleadings.	20.03 The court may **award** a successful party an amount not exceeding $50 for preparation and filing of pleadings.
Counsel Fee	**Representation** *Fee*
19.04 If the amount claimed by a successful party exceeds $500, exclusive of interest and costs, and the party is represented by a lawyer or student-at-law, the court may allow the party as a counsel fee at trial,	20.04(1) If the amount claimed by a successful party exceeds $500, exclusive of interest and costs, and a lawyer, student-at-law or agent represents the party, the court **may award the party a reasonable representation fee at trial or an assessment hearing.**
(a) in the case of a lawyer, an amount not exceeding $300;	**(2) In the case of a student-at-law or agent the amount of the representation fee shall not exceed 50% of the amount allowed in Rule 20.02.**
(b) in the case of a student-at-law, an amount not exceeding $150.	*Compensation for Inconvenience and Expense*
Compensation for Inconvenience and Expense	20.05 At a trial or an assessment hearing the court may order an unsuccessful party to pay a successful party an amount not exceeding $**500** as compensation for inconvenience and expense, if,
19.05 The court may order an unsuccessful party to pay to a successful party an amount not exceeding $300 as compensation for inconvenience and expense, if,	(a) the successful party is **self** represented;
(a) the successful party is unrepresented;	(b) the amount claimed exceeds $500, exclusive of interest and costs.
(b) the amount claimed exceeds $500, exclusive of interest and costs; and	**Penalty**
(c) the court is satisfied that the proceeding has been unduly complicated or prolonged by the unsuccessful party.	**20.06 Where the Court is satisfied that a party has acted unreasonably in a proceeding or has unduly complicated or prolonged it, the Court may order such party to pay an amount by way of compensation to any other party to such proceeding.**
	Adjournments
	20.07(1) The Court may postpone or adjourn a trial on such terms as are just, including the payment by one party to another of an amount as compensation for inconvenience and expense
	(2) The Court may impose appropriate sanctions, by way of costs, compensation or otherwise for the failure of a party to attend at a motion, settlement conference or trial where such party has received notice thereof.

EXISTING RULES	PROPOSED RULES
	Motions **20.08** The costs of a motion awarded by the Court, exclusive of disbursements, shall not exceed **$100.00 unless the Court orders otherwise.** ***Settlement Conferences*** **20.09 Costs awarded under rule 14, exclusive of disbursements, shall not exceed $100 unless the Court orders otherwise.** ***Costs Consequences of Offers to Settle*** 20.10**(1)** When a plaintiff makes **a written** offer to settle that is not accepted by the defendant, the court may award the plaintiff an amount not exceeding twice the costs of the action, exclusive of any amount awarded to a self represented party pursuant to subrule (3) hereof, if the following conditions are met: **(a)** The plaintiff obtains a judgment as favourable as or more favourable than the terms of the offer; **(b)** The offer was made at least seven days before the trial; and. **©)** The offer was not withdrawn **in writing** and did not expire before the trial. **(2)** When a defendant makes **a written** offer to settle that is not accepted by the plaintiff, the court may award the defendant an amount not exceeding twice the costs available to a successful party, exclusive of any amount awarded to a **self** represented party pursuant to subrule (3) hereof, from the date the offer was served, if the following conditions are met: **(a).** The plaintiff obtains a judgment as favourable as or less favourable than the terms of the offer, **(b)** The offer was made at least seven days before the trial; and **©)** The offer was not withdrawn **in writing** and did not expire before the trial. **(3)** If an amount is awarded under subrule (1) or (2) to a **self** represented party, the court may also award the party an amount not exceeding **$500.00** as compensation for inconvenience and expense.

EXISTING RULES	PROPOSED RULES
RULE 20 ENFORCEMENT OF ORDERS	**RULE 21** ENFORCEMENT OF ORDERS
Definitions	*Definitions*
20.01 In rules 20.02 to 20.10,	21.01 In rules 21.02 to 21.10,
"creditor" means a person who is entitled to enforce an order for the payment or recovery of money; ("créancier")	"creditor" means a person who is entitled to enforce an order for the payment or recovery of money; (" créancier")
"debtor" means a person against whom an order for the payment or recovery of money may be enforced. ("débiteur")	"debtor" means a person against whom an order for the payment or recovery of money may be enforced. (" débiteur")
Power of Court	*Power of Court*
20.02 (1) The court may,	21.02 (1) The court may,
(a) stay the enforcement of an order of the court, for such time and on such terms as are just; and	(a) stay the enforcement of an order of the court, for such time and on such terms as are just; and
(b) vary the times and proportions in which money payable under an order of the court shall be paid, if it is satisfied that the debtor's circumstances have changed.	(b) vary the times and proportions in which money payable under an order of the court shall be paid, if it is satisfied that the debtor's circumstances have changed.
Enforcement Limited While Periodic Payment Order in Force	*Enforcement Limited While Periodic Payment Order in Force*
(2) While an order for periodic payment is in force, no step to enforce the judgment may be taken or continued against the debtor by a creditor named in the order, except issuing a writ of seizure and sale of land and filing it with the sheriff.	(2) While an order for periodic payment is in force, no step to enforce the judgment may be taken or continued against the debtor by a creditor named in the order, except issuing a writ of seizure and sale of land and filing it with the sheriff.
Termination on Default	*Termination on Default*
(3) An order for periodic payment terminates immediately if the debtor is in default under it for 21 days.	(3) An order for periodic payment **terminates 15 days after the creditor has served the debtor** with **notice of default (Form** 21A) **unless the parties to the order agree to waive such pursuant to Minutes of Settlement**.
General	*General*
20.03 In addition to any other method of enforcement provided by law,	21.03 In addition to any other method of enforcement provided by law an order for the payment or recovery of money may be enforced by:
(a) an order for the payment or recovery of money may be enforced by,	(a) a writ of seizure and sale of personal property (Form **21B**) under rule 21.06,
(i) a writ of seizure and sale of personal property (Form 20C) under rule 20.06,	(b) a writ of seizure and sale of land (Form **21C**) under rule 21.07,
(ii) a writ of seizure and sale of land (Form 20D) under rule 20.07, and	(c) garnishment under rule 21.08; and
(iii) garnishment under rule 20.08; and	(d) a further order as to payment under subrule 21.10 (**8**).
(b) a further order as to payment may be made under subrule 20.10 (7).	
Certificate of Judgment	*Certificate of Judgment*
20.04 (1) If there is default under an order for the payment or recovery of money, the clerk shall, at the creditor's request, supported by an affidavit stating the amount still owing, issue a certificate of judgment (Form 20A) to the clerk of the territorial division specified by the creditor.	21.04 (1) If there is default under an order for the payment or recovery of money, the **registrar** shall, at the creditor's request, supported by an affidavit stating the amount still owing, issue a certificate of judgment (**Form 21D**) to the **registrar** of the territorial division specified by the creditor.
(2) The certificate of judgment shall state,	(2) The certificate of judgment shall state,
(a) the date of the order and the amount awarded;	(a) the date of the order and the amount awarded;
(b) the rate of postjudgment interest payable; and	(b) the rate of postjudgment interest payable; and
© the amount owing, including postjudgment interest.	(c) the amount owing, including postjudgment interest.
Delivery of Personal Property	*Delivery of Personal Property*
20.05 (1) An order for the delivery of personal property may be enforced by a writ of delivery (Form 20B) issued by the clerk to a bailiff, on the request of the person in whose favour the order was made, supported by an affidavit of that person or the person's agent stating that the property has not been delivered.	21.05 (1) An order for the delivery of personal property may be enforced by a writ of delivery (Form **21E**) issued by the **registrar to the sheriff**, on the request of the person in whose favour the order was made, supported by an affidavit of that person or the person's agent stating that the property has not been delivered.
Seizure of Other Personal Property	*Seizure of Other Personal Property*
(2) If the property referred to in a writ of delivery cannot be found or taken by the bailiff, the person in whose favour the order was made may make a motion to the court for an order directing the bailiff to seize any other personal property of the person against whom the order was made.	(2) If the property referred to in a writ of delivery cannot be found or taken by the **sheriff**, the person in whose favour the order was made may make a motion to the court for an order directing the **sheriff** to seize any other personal property of the person against whom the order was made.
(3) The bailiff shall keep personal property seized under subrule (2) until the court makes a further order for its disposition.	(3) **Unless the court orders otherwise, the sheriff** shall keep personal property seized under subrule (2) until the court makes a further order for its disposition.

EXISTING RULES	PROPOSED RULES
Storage Costs (4) The person in whose favour the order is made shall pay the bailiff's storage costs, in advance and from time to time; if the person fails to do so, the seizure shall be deemed to be abandoned.	*Storage Costs* (4)The person in whose favour the order is made shall pay the sheriff's storage costs, in advance and from time to time; if the person fails to do so, the seizure shall be deemed to **have been** abandoned.
Writ of Seizure and Sale of Personal Property 20.06 (1) If there is default under an order for the payment or recovery of money, the clerk shall, at the creditor's request, supported by an affidavit stating the amount still owing, issue to a bailiff a writ of seizure and sale of personal property (Form 20C), and the bailiff shall enforce the writ for the amount owing, postjudgment interest and the bailiff's fees and expenses.	*Writ of Seizure and Sale of Personal Property* 21.06 (1) If there is default under an order for the payment or recovery of money, the **registrar** shall, at the creditor's request, supported by an affidavit stating the amount still owing, issue to a **sheriff** a writ of seizure and sale of personal property (Form **21 B**), and the **sheriff** shall enforce the writ for the amount owing, post judgment interest and the **sheriff's** fees and expenses.
	(2) No writ of seizure and sale shall be issued without leave of the Court if more than six years has passed since the signing of the judgment.
Duration and Renewal (2) A writ of seizure and sale of personal property remains in force for six months after the date of its issue and for a further six months after each renewal.	*Duration and Renewal* (3) A writ of seizure and sale of personal property remains in force for six **years** after the date of its issue and for a further six **years** after each renewal.
(3) A writ of seizure and sale of personal property may be renewed before its expiration by filing with the clerk a request to renew it.	(4) A writ of seizure and sale of personal property may be renewed before its expiration by filing with the registrar a request to renew it.
(4) A writ of seizure and sale of personal property shall show the creditor's name, address and telephone number and the name, address and telephone number of the creditor's lawyer or agent, if any.	(5) A writ of seizure and sale of personal property shall show the creditor's name, address and telephone number and the name, address and telephone number of the creditor's lawyer or agent, if any.
Inventory of Property Seized (5) Within a reasonable time after the debtor or the debtor's agent makes a request, the bailiff shall deliver an inventory of personal property seized under a writ of seizure and sale of personal property.	*Inventory of Property Seized* (6) Within a reasonable time after the debtor or the debtor's agent makes a request, the **sheriff** shall deliver an inventory of personal property seized under a writ of seizure and sale of personal property.
Sale of Personal Property (6) Personal property seized under a writ of seizure and sale of personal property shall not be sold by the bailiff unless notice of the time and place of sale has been,	*Sale of Personal Property* (7) Personal property seized under a writ of seizure and sale of personal property shall not be sold by **the sheriff** unless **written** notice of the time and place of sale has been:
(a) mailed to the creditor at the address shown on the writ or the creditor's lawyer or agent and to the debtor at the debtor's last known address, at least 14 days before the sale; and	(a) mailed to the creditor at the address shown on the writ or **to** the creditor's lawyer or agent and to the debtor at the debtor's last known address, at least thirty days before the sale; and
(b) advertised in a manner that is likely to bring it to the attention of the public.	(b) advertised in a manner that is likely to bring it to the attention of the public.
Writ of Seizure and Sale of Land 20.07 (1) If an order for the payment or recovery of money is unsatisfied, the clerk shall at the creditor's request, supported by an affidavit stating the amount still owing, issue to the sheriff specified by the creditor a writ of seizure and sale of land (Form 20D).	*Writ of Seizure and Sale of Land* 21.07 (1) If an order for the payment or recovery of money is unsatisfied, the registrar shall at the creditor's request, supported by an affidavit stating the amount still owing, issue to the sheriff specified by the creditor a writ of seizure and sale of land (Form **21C**).
(2) A writ of seizure and sale of land issued under subrule (1) has the same force and effect and may be renewed or withdrawn in the same manner as a writ of seizure and sale issued under rule 60 of the Rules of Civil Procedure.	(2) A writ of seizure and sale of land issued under subrule (1) has the same force and effect and may be renewed or withdrawn in the same manner as a writ of seizure and sale issued under rule 60 of the Rules of Civil Procedure.
Garnishment 20.08 (1) A creditor may enforce an order for the payment or recovery of money by garnishment of debts payable to the debtor by other persons.	*Garnishment* 21.08 (1) A creditor may enforce an order for the payment or recovery of money by garnishment of debts payable to the debtor by other persons.
Joint Debts Garnishable (2) If a debt is payable to the debtor and to one or more co-owners, one-half of the indebtedness or a greater or lesser amount specified in an order made under subrule (15) may be garnished.	*Joint Debts* (2) If a debt is payable to the debtor and to one or more co-owners, one-half of the indebtedness or a greater or lesser amount specified in an order made under subrule (16) may be garnished.
Obtaining Notice of Garnishment (3) A creditor who seeks to enforce an order by garnishment shall file with the clerk in the territorial division in which the debtor resides or carries on business,	*Obtaining Notice of Garnishment* (3) **(a)** A creditor who seeks to enforce an order by garnishment shall file an affidavit (Form **21F**) **naming one debtor and one garnishee & stating**
(a) an affidavit stating,	
(i) the date of the order and the amount awarded,	(i) the date of the order and the amount awarded,
(ii) the territorial division in which the order was made,	(ii) the territorial division in which the order was made,
(iii) the rate of postjudgment interest payable,	(iii) the rate of post-judgment interest payable,
(iv) the total amount of any payments received since the order was granted,	(iv) the total amount of any payments received since the order was granted,
(v) the amount owing, including postjudgment interest,	(v) the amount owing, including post-judgment interest,

EXISTING RULES	PROPOSED RULES
(vi) the name and address of each person to whom a notice of garnishment is to be directed, (vii) the creditor's belief that those persons are or will become indebted to the debtor, and the grounds for the belief, and (viii) any particulars of the debts that are known to the creditor; and (b) a certificate of judgment (Form 20A), if the order was made in another territorial division. (4) On the filing of the material required by subrule (3), the clerk shall issue notices of garnishment (Form 20E) naming as garnishees the persons named in the affidavit. (5) A notice of garnishment issued under subrule (4) shall name only one debtor and only one garnishee. *Service of Notice of Garnishment* (6) The notice of garnishment shall be served by the creditor in accordance with subrule 8.01 (6). *Garnishee Liable From Time of Service* (7) The garnishee is liable to pay to the clerk any debt of the garnishee to the debtor, up to the amount shown in the notice of garnishment, within 10 days after service of the notice on the garnishee or 10 days after the debt becomes payable, whichever is later. (8) For the purpose of subrule (7), a debt of the garnishee to the debtor includes, (a) a debt payable at the time the notice of garnishment is served; and (b) a debt payable (whether absolutely or on the fulfilment of a condition) within 24 months after the notice is served. *Payment by Garnishee to Clerk* (9) A garnishee who admits owing a debt to the debtor shall pay it to the clerk in the manner prescribed by the notice of garnishment, subject to section 7 of the Wages Act. *Equal Distribution Among Creditors* (10) If the clerk has issued notices of garnishment in respect of a debtor at the request of more than one creditor and receives payment under any of the notices of garnishment, he or she shall distribute the payment equally among the creditors who have filed a request for garnishment and have not been paid in full. *Disputing Garnishment* (11) A garnishee referred to in subrule (12) shall, within 10 days after service of the notice of garnishment, file with the court a statement (Form 20F) setting out the particulars. (12) Subrule (11) applies to a garnishee who, (a) wishes to dispute the garnishment for any reason; or (b) pays to the clerk less than the amount set out in the notice of garnishment as owing by the garnishee to the debtor, because the debt is owed to the debtor and to one or more co-owners or for any other reason. *Service on Creditor and Debtor* (13) If the garnishee's statement indicates that the debt is owed to the debtor and to one or more co-owners, the garnishee shall also serve copies of the statement on the creditor and the debtor. *Notice to Co-Owner of Debt* (14) A creditor who is served with a garnishee's statement under subrule (13) shall forthwith send to the co-owners of the debt, in accordance with subrule 8.01 (10), a notice to co-owner of debt (Form 20G) and a copy of the garnishee's statement.	(vi) the name and address of each person to whom a notice of garnishment is to be directed, (vii) the creditor's belief that those persons are or will become indebted to the debtor, and the grounds for the belief, and (viii) any particulars of the debts that are know to the creditor; and **(b) I**f the order was made in another territorial division, a certificate of judgment (Form **21 D**) shall also be filed. (4) On the filing of the **documents** required by subrule (3), **the registrar** shall issue a notice of garnishment (Form 21I) **naming the garnishee requested in Form 21 F.** *Service of Notice of Garnishment* (5) A notice of garnishment shall be served **with a blank garnishee statement (Form 21 G)** by the creditor in accordance with subrule 8.01 (**9**) **and the debtor must be served with the notice of garnishment within 5 days of service on the garnishee.** (6) If the garnishee is a financial institution, the notice of garnishment and all further notices required to be served under this rule shall be served at the branch at which the debt is payable. *Garnishee Liable From Time of Service* (7) The garnishee is liable to pay to the registrar any debt of the garnishee to the debtor, up to the amount shown in the notice of garnishment, within 10 days after service of the notice on the garnishee or 10 days after the debt becomes payable, whichever is later. (8) For the purpose of subrule (**7**), a debt of the garnishee to the debtor includes, (a) a debt payable at the time the notice of garnishment is served; and (b) a debt payable (whether absolutely or on the fulfilment of a condition) within **six years** after the notice is served. Pay*ment by Garnishee to Registrar* (9) A garnishee who admits owing a debt to the debtor shall pay it to the **registrar** in the manner prescribed by the notice of garnishment, subject to section 7 of the *Wages Act*, **unless the court orders otherwise.** *Equal Distribution Among Creditors* (10) If the **registrar** has issued notices of garnishment in respect of a debtor at the request of more than one creditor and receives payment under any of the notices of garnishment, he or she shall distribute the payment equally among the creditors **who have issued a notice** of garnishment and have not been paid in full. **Garnishee Statement** (11) A garnishee referred to in subrule (**12**) shall, within 10 days after service of a notice of garnishment, file a statement (Form **21 H**). (12) Subrule (**11**) applies to a garnishee who: (a) wishes to dispute the garnishment for any reason; or (b) **is paying** to the **registrar** less than the amount set out in the notice of garnishment as owing by the garnishee to the debtor. *Service on Creditor and Debtor* **(13) The garnishee shall also serve copies of the statement on the creditor and the debtor.** *Notice to Co-Owner of Debt* (14) A creditor who is served with a garnishee's statement shall forthwith send to the co-owners of the debt, in accordance with subrule 8.01 (**13**), a notice to co-owner of debt (Form **21 I**) and a copy of the garnishee's statement.

EXISTING RULES	PROPOSED RULES
Garnishment Hearing (15) At the request of a creditor, debtor, garnishee, co-owner of the debt or any other interested person, the court may, (a) if it is alleged that the garnishee's debt to the debtor has been assigned or encumbered, order the assignee or encumbrancer to appear and state the nature and particulars of the claim; (b) determine the rights and liabilities of the garnishee, any co-owner of the debt, the debtor and any assignee or encumbrancer; © vary or suspend periodic payments under a notice of garnishment, or (d) determine any other matter in relation to a notice of garnishment. *Time to Request Hearing* (16) A person who has been served with a notice to co-owner of debt is not entitled to dispute the enforcement of the creditor's order for the payment or recovery of money or a payment made by the clerk unless the person requests a garnishment hearing within 30 days after the notice is sent. *Enforcement Against Garnishee* (17) If the garnishee does not pay to the clerk the amount set out in the notice of garnishment and does not send a garnishee's statement, the creditor is entitled to an order against the garnishee for payment of the amount set out in the notice, unless the court orders otherwise. *Payment to Person other than Clerk* (18) If, after service of a notice of garnishment, the garnishee pays a debt attached by the notice to a person other than the clerk, the garnishee remains liable to pay the debt in accordance with notice. *Effect of Payment to Clerk* (19) Payment of a debt by a garnishee in accordance with a notice of garnishment is a valid discharge of the debt as between the garnishee and the debtor and any co-owner of the debt, to the extent of the payment. (20) Unless a hearing has been requested under subrule (15), the clerk shall, when proof is filed that the notice of garnishment was served on the debtor, distribute to a creditor payments received under a notice of garnishment as they are received. *Payment if Debt Jointly Owned* (21) If a payment of a debt owed to the debtor and one or more co-owners has been made to the clerk, no request for a garnishment hearing is made and the time for doing so under subrule (16) has expired, the creditor may file with the clerk, within 30 days after that expiry, (a) proof of service of the notice to co-owner; and (b) an affidavit stating that the creditor believes that no co-owner of the debt is a person under disability, and the grounds for the belief. (22) The affidavit required by subrule (21) may contain statements of the deponent's information and belief, if the source of the information and the fact of the belief are specified in the affidavit. (23) If the creditor does not file the material referred to in subrule (21) the sheriff shall return the money to the garnishee.	*Garnishment Hearing* **(15)** At the request of a creditor, debtor, garnishee, co-owner of the debt or any other interested person, **the registrar shall serve on all parties a notice of hearing** (Form **21 J**), **and** the court may (a) **order the assignee or encumbrancer to appear and state the nature and particulars of the claim if it is alleged that the garnishee's debt to the debtor has been assigned or encumbered**; (b) determine the rights and liabilities of the garnishee, any co-owner of the debt, the debtor and any assignee or encumbrancer; (c) vary or suspend periodic payments under a notice of garnishment; or (d) determine any other matter in relation to a notice of garnishment. *Time to Request Hearing* **(16)** A person who has been served with a notice to co-owner of debt is not entitled to dispute the enforcement of the creditor's order for the payment or recovery of money or a payment made by the **registrar** unless the person requests a garnishment hearing within 30 days after the notice is sent. ***Enforcement Against Garnishee*** **(17)** If the garnishee does not pay to the **registrar** the amount set out in the notice of garnishment and does not send a garnishee's statement, the creditor is entitled to an order against the garnishee for payment of the amount set out in the notice, unless the court orders otherwise at the **garnishment** hearing. *Payment to Person other than Registrar* **(18)** If, after service of a notice of garnishment, the garnishee pays a debt attached by the notice to a person other than the **registrar**, the garnishee remains liable to pay the debt in accordance with the notice. *Effect of Payment to Registrar* **(19)** Payment of a debt by a garnishee in accordance with a notice of garnishment is a valid discharge of the debt as between the garnishee and the debtor and any co-owner of the debt, to the extent of the payment **and the registrar shall notify the creditor of the receipt by it of any such payments within 14 days**. **(20)** Subject to sub rule (**21**), unless a hearing has been requested or a motion filed under **subrules 8.11, 11.06 or 18.04**, the **registrar** shall, when proof is filed that the notice of garnishment was served on the debtor, distribute payments received under a notice of garnishment as they are received **except that no payments shall be distributed until 30 days have expired from the date of service of the first notice of garnishment**. *Payment if Debt Jointly Owned* **(21)** If a payment of a debt owed to the debtor and one or more co-owners has been made to the **registrar**, no request for a garnishment hearing has been made and the time for doing so under subrule (16) has expired, the creditor may file with the **registrar,** within 30 days after that expiry, (a) proof of service of the notice to co-owner; and (b) an affidavit stating that the creditor believes that no co-owner of the debt is a person under disability, and the grounds for the belief. **(22)** The affidavit required by subrule (**21**) may contain statements of the deponent's information and belief, if the source of the information and the fact of the belief are specified in the affidavit. **(23)** If the creditor does not file the material referred to in subrule (**21**) the **registrar** shall return the money to the garnishee.

EXISTING RULES	PROPOSED RULES
Consolidation Order 20.09 (1) A debtor against whom there are two or more unsatisfied orders for the payment of money may make a motion to the court for a consolidation order. *Notice of Motion* (2) The debtor shall file with the motion an affidavit stating, (a) the names and addresses of the creditors who have obtained an order for the payment of money against the debtor; (b) the amount owed to each creditor; ©The amount of the debtor's income from all sources, identifying them; and (d) The debtor's current financial obligations and any other relevant facts (3)Notice of the motion and a copy of the affidavit shall be served on each of the creditors mentioned in the affidavit, at least seven days before the hearing date. *Contents of Consolidation Order* (4) At the hearing of the motion, the court may make a consolidation order setting out, (a) a list of unsatisfied orders for the payment of money against the debtor, indicating in each case the date, court and amount and the amount unpaid; (b) the amounts to be paid into court by the debtor under the consolidation order; and (c) the times of the payments. (5) The total of the amounts to be paid into court by the debtor under a consolidation order shall not exceed the portion of the debtor's income that is subject to seizure or garnishment under section 7 of the *Wages Act*. *Creditor May Make Submissions* (6) At the hearing of the motion, a creditor may make submissions as to the amount and times of payment. *Further Orders Obtained After Consolidation Order* (7) If an order for the payment of money is obtained against the debtor after the date of the consolidation order for a debt incurred before the date of the consolidation order, the creditor may file with the clerk a certified copy of the new order; the creditor shall be added to the consolidation order and shall share in the distribution under it from that time. (8) A consolidation order terminates immediately if an order for the payment of money is obtained against the debtor for a debt incurred after the date of the consolidation order. *Enforcement Limited While Consolidation Order in Force* (9) While the consolidation order is in force, no step to enforce the judgment may be taken or continued against the debtor by a creditor named in the order, except issuing a writ of seizure and sale of land and filing it with the sheriff. *Termination on Default* (10) A consolidation order terminates immediately if the debtor is in default under it for 21 days. *Effect of Termination* (11) If a consolidation order terminates under subrule (8) or (10), the clerk shall notify the creditors named in the consolidation order, and no further consolidation order shall be made in respect of the debtor for one year after the date of termination. *Manner of Sending Notice* (11.1) The notice that the consolidation order is terminated shall be sent by mail or fax, or by e-mail in accordance with rule 8.09 if the person to whom it is sent is entitled to use electronic documents in the proceeding under rule 1.06. *Equal Distribution Among Creditors* (12) All payments into a consolidation account belong to the creditors named in the consolidation order, who shall share equally in the distribution of the money. (13) The clerk shall distribute the money paid into the consolidation account at least once every six months.	*Consolidation Order* 21.09 (1) A debtor against whom there are two or more unsatisfied orders for the payment of money may make a motion to the court for a consolidation order. *Notice of Motion* (2) The debtor shall file with the motion an affidavit (Form **21 K**) stating, (a) the names and addresses of the creditors who have obtained an order for the payment of money against the debtor; (b) the amount owed to each creditor; (c) the amount of the debtor's income from all sources, identifying them; and (d) the debtor's current financial obligations and any other relevant facts (3) Notice of the motion and a copy of the affidavit shall be served on each of the creditors mentioned in the affidavit, at least seven days before the hearing date. *Contents of Consolidation Order* (4) At the hearing of the motion, the court may make a consolidation order (Form **21 L**) setting out, (a) a list of unsatisfied orders for the payment of money against the debtor, indicating in each case the date, court and amount and the amount unpaid; (b) the amounts to be paid into court by the debtor under the consolidation order; and (c) the times of the payments. (5) The total of the amounts to be paid into court by the debtor under a consolidation order shall not exceed the portion of the debtor's income that is subject to seizure or garnishment under section 7 of the *Wages Act* **unless the court orders otherwise.** *Creditor May Make Submissions* (6) At the hearing of the motion, a creditor may make submissions as to the amount and times of payment. *Further Orders Obtained After Consolidation Order* (7) If an order for the payment of money is obtained against the debtor after the date of the consolidation order for a debt incurred before the date of the consolidation order, the creditor may file with the **registrar** a certified copy of the new order; the creditor shall be added to the consolidation order and shall share in the distribution under it from that time. (8) A consolidation order terminates immediately if an order for the payment of money is obtained against the debtor for a debt incurred after the date of the consolidation order. *Enforcement Limited While Consolidation Order in Force* (9) While the consolidation order is in force, no step to enforce the judgment may be taken or continued against the debtor by a creditor named in the order, except issuing a writ of seizure and sale of land and filing it with the sheriff. *Termination on Default* (10) A consolidation order terminates immediately if the debtor is in default under it for 21 days. *Effect of Termination* (11) If a consolidation order terminates under subrule (8) or (10), the **registrar** shall notify (Form **21 M**) the creditors named in the consolidation order, and no further consolidation order shall be made in respect of the debtor for one year after the date of termination. *Manner of Sending Notice* (12) The notice that the consolidation order is terminated shall be sent by mail or fax, or by e-mail in accordance with rule 8.09 if the person to whom it is sent is entitled to use electronic documents in the proceeding under rule 1.06, **or by other electronic means**. *Equal Distribution Among Creditors* (13) All payments into a consolidation account belong to the creditors named in a consolidation order, who shall share equally in the distribution of the money. (14) The **registrar** shall distribute the money paid into the consolidation account at least once every six months.

EXISTING RULES	PROPOSED RULES
Examination of Debtor or Other Person 20.10 (1) If there is default under an order for the payment or recovery of money, the clerk of the territorial division where the debtor or other person to be examined resides or carries on business shall, at the creditor's request, issue a notice of examination (Form 20H) directed to the debtor or other person. (2) The creditor's request shall be accompanied by, (a) an affidavit setting out, (i) the date of the order and the amount awarded, (ii) the territorial division in which the order was made, (iii) the rate of postjudgment interest payable, (iv) the total amount of any payments received since the order was granted, and (v) the amount owing, including postjudgment interest and (b) a certificate of judgment (Form 20A), if the order was made in another territorial jurisdiction. *Service of Notice of Examination* (3) The notice of examination shall be served in accordance with subrules 8.01 (7) and (8). (4) The debtor, any other persons to be examined and any witnesses whose evidence the court considers necessary may be examined in relation to, (a) the reason for nonpayment; (b) the debtor's income and property; (c) the debts owed to and by the debtor; (d) the disposal the debtor has made of any property either before or after the order was made; (e) the debtor's present, past and future means to satisfy the order; (f) whether the debtor intends to obey the order or has any reason for not doing so; and (g) any other matter pertinent to the enforcement of the order. *Who May Be Examined* (5) An officer or director of a corporate debtor, or, in the case of a debtor that is a partnership or sole proprietorship, the sole proprietor or any partner, may be examined on the debtor's behalf in relation to the matters set out in subrule (4). *Examinations Private* (6) The examination shall be held in the absence of the public, unless the court orders otherwise. *Order As To Payment* (7) After the examination or if the debtor's consent is filed, the court may make an order as to payment. *Enforcement Limited while Order as to Payment in Force* (8) While an order as to payment is in force, no step to enforce the judgment may be taken or continued against the debtor by a creditor named in the order, except issuing a writ of seizure and sale of land and filing it with the sheriff. *Contempt Hearing* (9) The court may find a person on whom a notice of examination has been served to be in contempt of court, and may order that he or she attend before the court for a contempt hearing, if the person, (a) fails to attend as required by the notice of examination, and the court is satisfied that the failure to attend is wilful; or (b) attends and refuses to answer questions.	*Examination of **Any Person in Default*** 21.10 (1) If there is default under any order **the registrar** of the territorial division where the person in default resides or carries on business shall, at the creditor's request, issue a notice of examination (Form **21 N**) directed to the person in default. (2) The creditor's request shall be accompanied by an affidavit (Form **21 O**) setting out, (i) the date of the order and the amount awarded, (ii) the territorial division in which the order was made, (iii) the rate of postjudgment interest payable, (iv) the total amount of any payments received since the order was granted, and (v) the amount owing, including postjudgment interest and (b) a certificate of judgment (Form **21D**), if the order was made in another territorial jurisdiction. ***Who May Be Examined** and the Duty to be Prepared* **(3)**Any officer or director of a corporation in default, any partner of a partnership in default and any individual using a business name who is in default may be examined **and must inform themselves and be prepared to answer enquiries about any matters referred to in subrule (6).** **(4) The party to be examined shall at the time of examination produce to the court a financial disclosure statement (Form 21 P).** *Service of Notice of Examination* **(5)** The notice of examination shall be served in accordance with subrules 8.01 (**10**) and (**11**). ***Examinations*** **(6)** Any person to be examined and any witnesses whose evidence the court considers necessary may be examined in relation to, (a) the reason for nonpayment; (b) the person's income and property; (c) the debts owed to and by the person; (d) the disposal the person has made of any property either before or after the order was made; (e) the person's present, past and future means to satisfy the order; (f) whether the person intends to obey the order or has any reason for not doing so; and (g) any other matter pertinent to the enforcement of the order. *Examinations Private* **and Under Oath** (7) **The examination shall be recorded** and held in the absence of the public unless the court orders otherwise**. The person being examined shall give evidence under oath.** *Order For Payment* (8) After the examination or if the person in default's written consent is filed, the court may make an order for payment. *Enforcement Limited while Order as to Payment in Force* (9) While an order as to payment is in force, no step to enforce the judgment may be taken or continued against the debtor by a creditor named in the order, except issuing a writ of seizure and sale of land and filing it with the sheriff. *Contempt Hearings* **21.11(1)** The court may find a person on whom a notice of examination has been served to be in contempt of court and may order that he or she attend before the court for a contempt hearing, if the person, (a) fails to attend as required by the notice of examination **or fails to comply on more than one occasion with an order for periodic payments**, and the court is satisfied that the failure to attend **or the failures to comply with the order for periodic payments were** wilful; or (b) attends and refuses to answer questions **or to produce documents or records.**

EXISTING RULES	PROPOSED RULES
Notice of Contempt Hearing (10) When an order for a contempt hearing is made under subrule (9), a notice (Form 20I) setting out the time, date and place of the hearing shall be, (a) sent to the creditor by mail or fax, or by e-mail in accordance with rule 8.09 if the creditor is entitled to use electronic documents in the proceeding under rule 1.06; and (b) served on the person by the creditor in accordance with subrule 8.01 (9). *Powers of Court at Contempt Hearing* (11) At the contempt hearing, the court may, (a) order that the person attend at an examination under this rule; (b) make an order as to payment; or (c) order that the person be jailed for a period not exceeding 40 days. *Warrant of Committal* (12) If an order is made under clause (11) (c), the clerk shall issue a warrant of committal (Form 20J) directed to all police officers in Ontario. (13) The warrant authorizes any police officer in Ontario to take the debtor or other person named in the warrant and deliver him or her to the nearest correctional institution. (14) The warrant remains in force for 12 months after its date of issue and may be renewed by order of the court made on the creditor's motion, for 12 months at each renewal. *Discharge* (15) The person shall be discharged from custody on the order of the court or when the time prescribed in the warrant expires, whichever is earlier.	*Notice of Contempt Hearing* (2)When an order for a contempt hearing is made under subrule (1), **(a) the registrar shall send** a notice (Form **21 Q**) to the creditor by mail or fax **or other electronic means;** **(b) the notice shall** be served **personally** by the creditor in accordance with subrule 8.01 (**12**). *Powers of Court at Contempt Hearing* (3) At the contempt hearing, the court may, **(a) set aside the finding of contempt of court and** (i) order that the person attend at an examination under this rule; (ii) make an order as to payment; or **(b)** order that the person be jailed for a period not exceeding 40 days. *Warrant of Committal* (4) If an order is made under **subrule 21.11(3)(b)**, the registrar shall issue a warrant of committal (Form **21 R**) directed to all police officers in Ontario. (5) The warrant authorizes any police officer in Ontario to take the debtor or other person named in the warrant and deliver him or her to the nearest correctional institution. (6) The warrant remains in force for 12 months after its date of issue and may be renewed by order of the court made on the creditor's motion, for 12 months at each renewal. *Discharge* (7) The person shall be discharged from custody on the order of the court or when the time prescribed in the warrant expires, whichever is earlier (Form **21 S**). **Satisfaction of Order** **21.12 An order which has been satisfied in full,** **(a) shall be vacated by the registrar upon filing the creditor's confirmation of satisfaction and consent to vacate; or** **(b) may be vacated by filing a motion served on the creditor together with an affidavit having evidence of payment attached as an exhibit.**
RULE 21 REFEREE 21.01 (1) A referee shall assist the court by performing the advisory duties and functions that it directs. (2) Without limiting the generality of subrule (1), if the court so directs, a referee shall conduct pre-trial conferences under rule 13 and examinations under rule 20.10 (examination of debtor). (3)Except under subrule 9.03 (5) (order as to terms of payment), a referee shall not make a final decision in any matter referred to him or her but shall report his or her findings and recommendations to the court.	RULE 22 **ASSISTANCE TO THE COURT** 22.01(1) A referee**, or other person designated by the court** shall assist the court by performing the following advisory duties and functions**, if the regional senior judge or his or her designate so directs:** **(a)** conduct settlement conferences under rule **14**; **(b)** hear motions for consolidation orders under rule 21.09, and **(c)** perform accountings before or after judgment. **(2)** Except under subrule 9.03(5) (order as to terms of payment), a referee **or other designated person** shall not make a final decision in any matter referred to him or her but shall report his or her findings and recommendations to the court. **(3) Subrules 14.05(4) to (6) apply to all duties and functions performed under this rule.**